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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 251.

JOSEPH D. TAYLOR AND MARY R. HOBBS, EXECUTORS OF WILLIAM HILL, DECEASED, APPELLANTS,

vs.

ALBERT BOWKER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE.

FILED MAY 14, 1884.

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1 MAINE DISTRICT,
First Circuit, ss:

At a term of the circuit court of the United States for the first circuit, begun and holden at Portland, within and for the district of Maine, on Thursday, the twenty-third day of September, in the year of our Lord one thousand eight hundred and eighty:

Before the Hon. Nathan Clifford, associate justice Supreme Court U. S., and the Hon. Edward Fox, district judge of Maine.

On the eleventh day of April, in the year of our Lord one thousand eight hundred and *and* seventy-four, was filed the following:

Bill of complaint.

To the judges of the circuit court of the United States for the district of Maine:

Albert Bowker, of Boston, in the commonwealth of Massachusetts, a citizen of Massachusetts, brings this his bill against William Hill, of North Berwick, and Cornelius Sweetser and John Q. Scamman, both of Saco, and all of the county of York, in the State of Maine, all citizens of the State of Maine.

And thereupon your orator complains and says:

That the Piscataqua Fire and Marine Insurance Company was a certain fire and marine insurance corporation created by the statutes of Maine, which your orator craves to refer to as part of this bill, approved March 17th, A. D. 1855, April 14th, A. D. 1860, March 8th, A. D. 1862, and transacting fire and marine insurance business at South Berwick, county of York, in said State of Maine, at all the periods hereinafter set out until on or about May 21, A. D. 1866, when such business was suspended by reason of the insolvency of such corporation; and that the said corporation duly surrendered its charter as by the statutes of Maine approved February 28, 1867, and long before the filing of this bill ceased to be a corporation, but that at the term of the supreme judiciary court, held at Saco, within and for the county of York, on the first Tuesday of January, A. D. 1867, said John Q. Scamman, and at the term of said court

2 holden at Saco, within and for said county, on the first Tuesday of January, A. D. 1868, said Sweetser and one Deering were duly appointed and qualified trustees of said company, as provided in chapter 46 of the revised statutes of said State then in force; and also in said act approved February 28, A. D. 1867, as more fully appears by the record, a copy of which is hereto annexed and made part of this bill, and said corporation long since ceased to have any corporate existence for any purpose whatever; that said Deering afterwards deceased, leaving said Scamman and Sweetser the only trustees of said corporation.

And your orator, further showing to your honors, says: On the thirty-first day of October, A. D. 1865, your orator was the owner of and had an insurable interest in the steamer Russia, and that on or about the fifteenth day of November, 1865, his said interest continuing, he procured insurance upon said vessel and his interest therein in the sum of five thousand ($5,000) dollars in the said Piscataqua Fire and Marine Insurance Company, by policy of the date of October 31st, 1865, issued by said company,

No. 2498 (twenty-four hundred and ninety-eight); that upon the ninth day of January, A. D. 1866, said vessel was wholly lost and destroyed through perils insured against by said policy, due notice and proof of which loss was made to said company, but the said insurance was not paid to your orator, who, on the 7th day of June, A. D. 1866, commenced an action in the supreme judicial court of Maine, for said county of York, to recover of said company the sum due him by reason of said loss under said policy, which action, after due service and return of the writ therein, was duly entered at the September term, A. D. 1866, of said court for said county, and was thence continued from term to term therein until the January term, 1868, of said court, when judgment was rendered in said cause in favor of said Bowker against said corporation for the sum of five thousand and sixteen dollars and forty-four cents ($5,016.44) debt
3 or damage, and eighty-two dollars and seventy-seven cents ($82.77) costs of same suit, which judgment was entered upon the fourth day of April, 1868, and execution issued thereon April 8th, 1868, which execution was placed in the hands of a deputy of the sheriff of said county of York, who, on the 8th day of July, 1868, returned the same wholly unsatisfied into the office of the clerk of the court whence it issued, with the return of said deputy sheriff thereon, that, after diligent search, he was unable to find any property of said corporation wherewith to satisfy said execution, which has never since been satisfied, but the judgment aforesaid remains in full force and virtue, and not reversed, annulled, or in any part satisfied, so that your orator is still a judgment creditor of said corporation to the amount of said judgment and the interest and costs since accrued thereon.

And your orator, further showing to your honors, says there is no property of said insurance company upon which his said judgment can be satisfied according to any proceeding known to the common law, nor are there any assets in the hands of said trustees with which to satisfy the same.

And your orator, further showing to your honors, says that said act, approved February 28, 1867, expressly provided that so much of the acts aforesaid, incorporating said company and amendatory thereof, as confer any special remedies against officers or stockholders of said corporation shall not be affected thereby, and that said act shall not relieve said officers or stockholders, or any of them, from any personal liabilities under any of said acts chartering said company or amendatory thereof, nor under any of the statutes of the State of Maine.

And your orator, further showing to your honors, says the second section of said act approved March 14, 1860, provides that the holders of the guarantee capital of said company should receive such share of the
4 net profits of said company as may be provided by the charter and by-laws of said company, and declared by vote of the directors, and that said act, approved March 8, A. D. 1862, provided that said guarantee capital shall be held for the payment of all losses and liabilities incurred by said company during the continuance of its charter, and while any liabilities shall remain outstanding against it.

And your orator, further showing to your honors, says that said company did heretofore unlawfully make a division of portions of its property, and had, and its corporators still have, property which cannot be attached, and that said Hill has possession of portions of the property so unlawfully

divided, and which cannot be attached, and that such portions so held by him should be paid to your orator in satisfaction of his said judgment, all as hereinafter more fully set forth, to wit: Said Hill, at the time your orator obtained said policy of insurance, was treasurer of said company and stockholder of the said guaranty capital, having about six hundred shares therein, and so continued such treasurer and stockholder until said corporation ceased to exist, as hereinbefore stated.

During the year A. D. 1865 said company paid said Hill, and said Hill received from said company dividends on his said stock, as follows:

January 31st, 1865, or thereabouts	$900 00
July 27th, 1865, or thereabouts	900 00
December 1st, 1865, or thereabouts, by note	3,269 00
Also December 23d, 1864, or thereabouts	3,462 00

And all said dividends were so paid and received, though at the time they were so paid the capital stock of said company had been diminished by losses, depreciation, and otherwise, to an amount greater than the whole dividends declared to all the stockholders of said company, of which
5 said Hill received his proportion as aforesaid, and that no part of said dividends were paid from profits of the said company, so the same were unlawfully divided, all of which said Hill well knew.

Said insurance company, on or before the fifth day of May, A. D. 1866, was insolvent, and the whole of its capital stock was then necessary for the payment of its debts, all of which said Hill then well knew, and said Hill then being a stockholder in said company and treasurer thereof did then, or about that time, unlawfully and in fraud of your complainant and of other creditors of said company, cancel and surrender eighty-two (82) shares of his capital stock as aforesaid, of the par value of eighty-two hundred (8200) dollars, and also two hundred twelve shares of the same of the par value of twenty-one thousand two hundred (21,200) dollars, and took and received in lieu of said eighty-two shares eighty-two shares of the capital stock of the Dover and Winnepisseogee Railroad Company, of the value of eighty-two hundred (8200) dollars, assets of said insurance company, and afterwards converted the same to his own use, and sold the same for the promissory notes of the Boston & Maine Railroad to the amount of eighty-two hundred (8200) dollars, and also received at or about the same time, in lieu of said two hundred and twelve shares, the note of said insurance company for twenty-one thousand two hundred (21,200) dollars, which note he has since paid from moneys in his hands as such treasurer, and hath ever since retained said moneys and the proceeds of said railroad stock, so that, as against your orator, said transfers to said Hill were void, and moneys and other proceeds of said railroad stock and said note, as against your orator, continue the assets of said insurance company and its corporators.

On or about May 5th, A. D. 1866, said insurance company assigned and transferred to said Hill the following choses in action, assets of said company, to wit:

6	William Hill, guaranteed stock note with collaterals..	$21,000 00
	William Hobbs.....ditto.....	1,000 00
R. M. Chapman.....ditto.....		800 00
Harriet Small.....ditto.....		500 00

John H. Small	ditto	400 00
Elizabeth Cole	ditto	400 00
J. S. Ricker	ditto	3,000 00
Ditto	ditto	1,000 00
Thomas H. Cole	ditto	500 00
Stephen Locke	ditto	400 00
Thomas Day	ditto	1,400 00
Addison Gilbert	ditto	700 00
George J. Marsh	ditto	600 00
Ezra Ames	ditto	500 00
C. A. Staples	ditto	200 00
C. H. Milliken	ditto	1,000 00
T. Quimby	ditto	200 00
Woodard Latham	ditto	300 00
Joseph McDonald	ditto	400 00
O. D. Wetmore	ditto, in part	36 00
David L. Stevens	ditto	1,000 00
Oscar D. Wetmore	ditto	1,164 00
William R. Porter	ditto	2,000 00
E. H. Atwood	ditto	1,000 00
W. W. Stickney	ditto	3,000 00
Mary R. Wallingford	ditto	1,300 00
Edward Hayman	ditto	500 00
John Plumer	ditto	5,000 00
William Deering	ditto	2,000 00
Benjamin Tarr	ditto	500 00
James G. Brackett	ditto	500 00
Leonard Andrews	ditto	500 00
Gilman S. Bennett	ditto	500 00
George R. Bradford	ditto	500 00
7 Newell Gibbs	ditto	500 00
Alvan Bacon	ditto	1,000 00
John S. Chadwick	ditto	100 00
Asa Small	ditto	1,000 00
Solomon A. Plumer	ditto	300 00
Hannah M. Luques	ditto	400 00
John H. Buckleigh	ditto	500 00
George W. Brown	ditto	2,000 00
Joseph Morrill	ditto	2,000 00
Addison Gott	ditto	500 00
Putnam and Chase	ditto	6,000 00
Woodbridge Odlin	ditto	2,500 00
Charles H. Wiggin	ditto	1,000 00
Ammi R. Mitchell	ditto	2,500 00
Ditto.	ditto	2,500 00
Ditto.	ditto	2,500 00
Thomas Day	ditto	75 00
Benjamin Ladd	ditto	100 00
Archelaus Jackson	ditto	300 00
Joseph McIntire	ditto	300 00
Harriet and Rufus Small	ditto	1,000 00

Otis I. Hall	ditto	500 00
Abner Oakes	ditto	200 00
Ditto.	ditto	200 00
Ditto.	ditto	300 00
George Latham	ditto	500 00
Ephraim Penney	ditto	300 00
E. S. Clark	ditto	100 00
Thomas B. Ellis	ditto	1,000 00
One share of the First National Bank, Biddeford (pledged by B. E. Cutter with note)		100 00
One share of the Biddeford Gas-Light Company (pledged by B. E. Cutter with note)		100 00
U. S. compound interest notes (pledged by Oliver Stackpole with note		900 00
8 Thirty shares of the Cocheco Bank (pledged by Joseph Morrill with note		3,000 00
City of Bath bonds		2,000 00
City of Portland bonds		1,500 00
Thirty shares of the South Berwick National Bank		1,500 00
U. S. 7.30 Treasury note		100 00
Nineteen shares Kinsman St. R. R. stock, par value $50 (pledged by William R. Porter with note)		900 00
		$94,075 00

Said assets were, at the time of said transfer, of the value of about ninety-four thousand seventy-five (94,075.00) dollars, and a portion of the same have since been reduced to cash or its equivalent by said Hill, though what portion is unknown to your orator.

Said assets were transferred as aforesaid to said Hill, as security for certain claims of said Hill against said company, amounting to the sum of fifty-nine thousand five hundred forty-one (59,541.00) dollars, which, as your orator is informed and believes, have long since been fully satisfied leaving a large surplus of said assets, or of the proceeds thereof, in the hands and possession of said Hill, and which were held by him as treasurer of said insurance company so long as said corporation had any existence, and which, since it ceased to exist, were and are so held to meet the equitable demands of your orator and other persons thereon.

And your orator further says that he has repeatedly applied to said insurance company for payment of said judgment, and had well hoped that they would have complied with his reasonable request, as in equity they should have done, but now so it is that said insurance company refused to comply with said request, and your orator has been wholly unable
9 to obtain satisfaction of any portion of said judgment, and defendant Hill pretends that said insurance company did receive profits, from which the dividends aforesaid were paid in whole or part, whereas your orator charges that in estimating its profits and losses for the several years of 1864 and 1865, as shown by their annual exhibits made in these several years, said company did include moneys received and notes taken for premiums on risks which were undetermined at the time of making such dividends, which it could not lawfully do.

And defendant Hill further pretends that said Dover and Winnepissco-

gee Railroad Company stock was transferred to him as aforesaid, by virtue of an alleged contract with said company, made June 1st, A. D. 1863, and ratified by the directors of said company on or about May 4th, A. D. 1866, and that said two hundred and twelve shares were surrendered to said company and said note taken therefor, by virtue of a vote of the directors of said company, passed December 26th, A. D. 1862, whereas your orator charges that said contract, if ever made, and said votes of said directors, were all and each illegal and fraudulent, because they were each intended to enable said insurance company to contract with your orator and other policy-holders and creditors on the faith that all said stock of said Hill was fully paid up in good faith, while at the same time said alleged contract, and said vote of December 26th, A. D. 1862, were devised to enable said Hill to withdraw the same in fraud of such policy-holders and other creditors; and your orator further charges that said alleged contract, and said vote of December 26th, A. D. 1862, were subsequently disregarded by both said insurance company and said Hill, and became obsolete, and that said Hill received dividends upon all said shares of the stock of said insurance company during the whole time the same so stood in his name, none of which dividends has he ever returned to said insurance company; and that when said stock was surrendered and
10 cancelled, both said directors and said Hill knew said corporation was insolvent and intended the same in fraud of the creditors of said insurance company.

And your orator further charges, that even if said intended contract, and vote of December 26th, A. D. 1862, had been valid when made, and could lawfully have been carried into effect, so long as said insurance company was solvent, and so long as there remained sufficient assets to pay and discharge its liabilities, yet the same were no longer valid as against your orator and other creditors of said insurance company, after the said company became insolvent as aforesaid.

And said Hill further pretends that all said shares were not properly portions of any capital stock of said company, and that said dividends were in fact payment of interest on said shares which said company could lawfully make, otherwise than from profits earned; whereas your orator charges that the same shares, with others of similar character, though the same were styled a guaranty capital stock, were in truth and in fact the capital stock of said company, holden as hereinbefore set out, to meet the obligations of said company and to secure the creditors thereof. And that said so-called interest was in truth and fact dividends, and was in truth and fact lawfully payable only from the profits of said company, as hereinbefore set out.

All which doings and pretences of said Hill are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator.

In consideration whereof, and forasmuch as your orator is remediless in the premises according to the strict rules of the common law, and can only have relief in a court of equity—

To the end, therefore, that said William Hill, and each of the other defendants, may, upon his corporal oath, full, true, and direct and
11 perfect answer make to all and singular the matters hereinbefore stated and charged, as fully and distinctly as though the same were hereinafter repeated, and that not only as to the best of his knowledge and

remembrance, but also as to the best of his hearsay, information, and belief, and more especially that he, said Hill, may answer:

First. What and which way is the balance of your individual cash account with the Piscataqua Fire and Marine Insurance Company? Annex a detailed statement showing all receipts and payments, the dates, to and from whom, and on what account.

Second. Have you any cash, or securities, or other property in your hands, individually or as an officer or former officer, belonging to said insurance company or its trustees or creditors? If yes, annex a detailed statement of the same.

Third. What securities have you ever received from said company in your individual capacity? And what disposition have you made of them? Annex detailed statement showing dates, to whom, and amounts, received and disposed of, and on what account. And what disposition have you made of the proceeds? Annex detailed statement showing dates, to whom, and on what account. Annex similar detailed statements in relation to all the choses in action specified in this bill, and the proceeds thereof, unless all the same are included in previous statements.

And that this honorable court may cause your orator's said judgment to be satisfied from the property so divided, transferred, and delivered to said Hill, or from the proceeds thereof, and that your orator may have such other remedy as his case may require, and as to your honors may seem meet—

May it please your honors to grant to your orator the most gracious writ of subpœna, to be directed to said Cornelius Sweetser and John Q. Scamman, trustees, and to the said William Hill, requiring them
12 at a day certain, and under a certain penalty therein to be specified, personally to appear before your honors in this honorable court, then and there to answer all and singular the premises, and to stand to, abide, and perform such orders and decrees therein as to your honors may seem meet, and your orator will ever pray.

ALBERT BOWKER.

WILLIAM L. PUTNAM, Portland, and
EDWIN B. SMITH, Saco, Maine,
Solicitors.

Exhibit annexed to bill.—Filed Jan. 4, 1879.

335. Moses Lowell et als., pet'rs for app't of tr's of Piscat. F. & M. Ins. Company.

B. F. Hamilton, for pet'rs; Hamden & Hapgood, cred'rs; Drew for company; Evans & Putnam for Abbot & Alex. Stephenson; Smith specially for Baker, cred'r.

Motion of Stephenson for extension of time fil'd, and motion to dismiss by Barker, fil'd Jan'y tr., '67. Trustees appt'd Jan'y tr., '67. Exceptions by Stephenson filed and allowed as of March 8th, '67, Jan'y tr. Decree as to tr's filed Jan'y tr., '67. Tr's bond approved and filed May 7, '67. Except's by Stephenson withdrawn, May t., '67. Pet. for decree of sale of pers. property mentioned in schedule filed and sale decreed, May tr., '67, being June 15, '67. Pet. for leave to compound debts filed and leave granted, May t., '67.

Report filed Jan. 13, '68 (acc't filed same day and accepted). Resignations of Knowlton and Beatty, trustees, filed and accepted. James M. Deering and Cornelius Sweetser app't'd trustees. J. D. Scamman's acc't filed and allowed 49th day tr.

YORK, *ss:*

ALFRED, *Jan.* 3, 1879.

I certify the foregoing to be a true extract from docket of S. J. court for said county, Jan. t., 1868.

Attest:

AMOS L. ALLEN, *Clerk.*

13 Upon the filing of the foregoing bill a subpœna in chancery issued, returnable at May rules, next ensuing, which was returned duly executed, and said cause was entered in court. Said cause was continued to April term, A. D. eighteen hundred and seventy-five, and on the twenty-sixth day of June, in said term, was filed the following:

Demurrer.

The demurrer of William Hill, defendant, to the bill of complaint of Albert Bowker, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, do demur thereto, and for cause of demurrer shows: That the said complainant hath not, in and by his said bill, made or stated such a cause as doth or ought to entitle him to any such discovery or relief as thereby sought and prayed for, from or against this defendant.

Wherefore this defendant demands the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

By JO'IAH H. DRUMMOND,
His Solicitor.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

JOSIAH H. DRUMMOND,
Solicitor for Respondent.

I, William Hill, one of the respondents above named, hereby certify that the foregoing demurrer is not interposed for delay.

WILLIAM HILL.

STATE OF MAINE, *York, ss:*

JUNE 24*th*, 1874.

Then personally appeared William Hill, and made affirmation according to the statute in such case made and provided that the foregoing statement by him subscribed is true.

Before me,

[L. S.]

WILLIAM HOBBS,
Notary Public.

14 And on the fifteenth day of August, A. D. eighteen hundred and seventy-four, is filed the following:

Answer of Sweetser & Scamman.

The answer of Cornelius Sweetser and John Q. Scamman.

And now the said respondents come and, reserving to themselves all right of exception to said bill of complaint, for answer thereto say:

That it is true they were appointed and qualified as trustees of the Piscataqua Fire and Marine Insurance Company, as alleged in said bill, and that James M. Deering, afterwards deceased, leaving said Sweetser and Scamman the only trustees of said corporation; and true it is there are no assets in the hands of said trustees with which to satisfy the judgment alleged in said bill to be existing against said corporation; and that as to all other matters and things set forth in said bill of complaint they know not whether the same be true or not, and cannot answer thereto whether the same be true or not; and, being matters between the said complainant and persons other than the respondents, cannot set forth any belief concerning the same.

J. Q. SCAMMAN.
CORNELIUS SWEETSER.

AUGUST 12, A. D. 1874.

YORK, *ss:*

Personally appeared John Q. Scamman and Cornelius Sweetser,
15 above named, and made oath that the above answer by them made has been read by them, and they know the contents of it, and that the same is true of their own knowledge, except matters stated upon information or belief, and that as to these matters they believe them to be true.

[L. S.] JOHN S. DERBY,
Judge of the Municipal Court of the City of Saco, the same being a Court of Record.

Said cause was further continued from term to term to September term, A. D. eighteen hundred and seventy-six, when it is ordered that said bill be taken pro confesso as to all the respondents except Hill; and said cause was further continued from term to term, to April term, A. D. D. eighteen hundred and seventy-nine, when the same came onto be heard upon the demurrer aforesaid, and said demurrer was overruled. Lowell, *J.*

Said cause having been further continued to September term, A. D. eighteen hundred and seventy-nine, on the sixth day of December, in that year, was filed the following:

16 *Answer of William Hill.*

Circuit court of the United States, district of Maine. In equity.

ALBERT BOWKER)
v.)
WILLIAM HILL AND ALS.)

The said respondent, not waiving the many insufficiencies in said bill,

for answer thereto, or to so much thereof as he is advised is material to be answered, says:

That he admits that the allegations of the bill that the Piscataqua Fire and Marine Insurance Company was created a corporation, transacted business as such, became insolvent, surrendered its charter and ceased to be a corporation, and that trustees were appointed under the statute of the State named therein, are true.

That he has been informed, and believes it to be true, that the complainant insured an interest in the steamer Russia in said company, and that he recovered judgment against said company, as alleged in said bill; and that said judgment was entered upon the fourth day of April, A. D. 1868, and that execution issued thereon and was returned unsatisfied,
17 as alleged in said bill; but he says he is advised, and, therefore, upon information and belief, alleges that the issuing of said execution was unauthorized by law, and was, and all the proceedings thereon were, absolutely void, inasmuch as said corporation had then been dissolved, and the statutes of the State of Maine, to which the respondent refers, authorized the complainant to proceed to judgment in said case, but did not authorize him to issue execution thereon.

That he admits that the act approved February 28, 1867, referred to in said bill, did provide that any special remedies given by the statutes of the State of Maine should not be affected by said act; but the respondent is advised, and so alleges, that all other remedies, both in law and in equity, were taken away by said act, and that he is informed and believes that the statutes of Maine did not then give a remedy by a creditor's bill in equity against the officers and stockholders of a corporation, except as provided in section thirty-four of chapter forty-six of the Revised Statutes of 1857.

That he admits that by section thirty-four of chapter forty-six of the Revised Statutes of 1857 remedy was given to judgment creditors by bill in equity in certain cases against stockholders in corporations; but he is advised, and therefore alleges, upon information and belief, that the complainant recovered his judgment aforesaid on the fourth day of April, A. D. 1868, and that his alleged cause of action accrued on that day, and that at the time of the filing of the complainant's said bill of complaint, to wit, on the eleventh day of April, A. D. 1874, said complainant's cause of action was barred by the statute of limitations of the State of Maine, to which the respondent craves leave to refer.

As to the provisions of the acts of the legislature severally approved March
17, 1855, March 14, 1860, and March 8, 1862, referred to in said bill of complaint, the respondent craves leave to refer to copies thereof filed as ex-
18 hibits in the case and made a part of this answer, and to submit the construction thereof to the honorable court.

That he admits that he was originally a stockholder in said corporation, having two hundred and ten shares of the stock, and continued to hold the same until the dissolution of said corporation, and he denies that he was the owner of any other stock as alleged in the bill except as hereinafter stated.

That it is true that he was treasurer of said corporation as alleged in the bill, but that by authority of the directors the marine business was done in Boston by the president, and the money pertaining to that part of the business was collected and paid out by him without coming into the

hands of the treasurer, and by the same authority the fire business was conducted by the secretary at the company's office in South Berwick in the same manner, and the treasurer's books were kept by the secretary; and the respondent, as treasurer, had little to do except to sign official documents, and, as he lived some eight miles from the company's office and was engaged in his private business, he had but little actual knowledge of the condition and business of the company, but acted upon the information given him by the president and secretary.

That upon information and belief he denies that said company ever unlawfully made any division of portions of its property as alleged in said bill, and he denies that any dividends were ever paid to the stockholders, except interest at six per cent. upon the "guarantee stock," which was paid, as he was then informed and believed, and now is informed and believes, by authority of the express provisions of the charter, and the alleged dividends paid to him were the interest upon his stock which the officers then understood the company had the right to pay whether any profits had been earned or not.

19 He denies, upon information and belief, that they were no profits, as alleged in said bill, during the year 1864 and the first half of 1865, and he denies that he knew that any part of any of the alleged dividends named in the bill were paid from the profits of the company; and he alleges that in the month of December, A. D. 1865, he had no knowledge or suspicion that the company was insolvent and unable to pay all its liabilities, and, upon information and belief, he alleges that the company was then solvent, but that, between December and May, 1866, there were extraordinarily large marine losses, amounting, as he has been informed and as he believes, to the amount of nearly five hundred thousand dollars, which losses caused the insolvency of said company.

He says that on the first day of July, A. D. 1863, said company requested the loan to it of eighty-two shares in the stock of the Dover and Winnepissogee Railroad Company, and upon the request of the directors the respondent assigned to it eighty-two shares of said railroad stock, and eighty-two shares of said company stock were issued to the respondent, with the agreement that said railroad company stock should be returned to him on demand and upon surrender of said insurance company stock, and in accordance with that agreement said re-exchange was made about the fifth day of May, A. D. 1866.

That on the first day of August, A. D. 1862, said company did issue to him two hundred and twelve shares in the capital stock of said company, for which he paid by transfer of certain securities; that afterwards the directors voted to reduce the capital stock by purchasing in, and in accordance therewith he sold to said company said two hundred and twelve shares of stock, and received in payment therefor the company note for twenty-one thousand two hundred dollars, according to a vote of the directors of December 26, 1862, a copy of which is filed as an ex-

20 hibit in this case, which note has been since paid out of the proceeds of assets assigned to him as hereinafter stated.

That on or about the fifth day of May, A. D. 1866, the said company did transfer to the respondent the notes of the parties named in the bill to the amount therein named, with the collaterals given by said parties with their said notes, but he denies that they were of the value of ninety-four thousand and seventy-five dollars, as alleged in the bill.

That some of the securities turned out to be worthless, while in all cases the givers of the notes had the right to redeem the securities upon payment of the face of their respective notes.

That the respondent held against the said company, when said assets were assigned to him, the following claims:

Note dated July 6, 1861,	for		$2,100
" Aug. 6, 1861,	"		2,000
" Dec. 1, 1865,	"		3,269
" Feb'y 1, 1866,	"		21,200
" Feb'y 8, 1866,	"		20,000
" April 17, 1866,	"		15,000
" May 1, 1866,	"		11,272
" May 1, 1866,	"		10,000
Total			$84,841

That on the eighth day of June, A. D. 1866, he had collected from said notes assigned to him as aforesaid the sum of thirty-four thousand three hundred and thirty-six dollars, leaving still due him, after adjustment of interest, the sum of fifty-one thousand two hundred and fourteen dollars and sixty-six cents.

That he has collected of said notes since said eighth day of June, A. D. 1866, and realized from said assets, about the sum of thirty-nine thousand dollars, and that he has realized nothing from about twenty thou-
21 sand seven hundred and fifty dollars of the nominal amount of said assets, which have proved worthless.

That on the first day of September, A. D. 1872, he paid on account of said company the sum of thirty-six hundred and eighty-six dollars and ninety-four cents, on a judgment recovered against him in a suit before the filing of said bill, which he claimed to hold against said assets assigned to him and any liability of his on account of said corporation.

That the accounts of the collections were kept by his agent, William Hobbs, who is now unable, on account of sickness, to give him the information or furnish him the accounts, and he is unable at present to give the precise and detailed statements inquired in the bill, but the general statement hereinbefore given is substantially correct.

That he denies all fraud or fraudulent intent as alleged in the bill, and avers that as to the eighty-two shares and two hundred and twelve shares of the stock above named he always supposed and considered himself to be a creditor of said company, and that he had the right to secure himself in the manner above stated.

And this defendant denies that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges, in this behalf most wrongfully sustained.

WILLIAM HILL.

JOSIAH H. DRUMMOND,
Solicitor for Respondent.

22 STATE OF MAINE, *York, ss:*

DEC. 2D, 1879.

Then personally appeared William Hill, and made affirmation, according to the statute in such case made and provided, that he has read or heard read the foregoing answer, and knows the contents thereof, and that the same are true of his own knowledge, except such matters as are stated on information and belief, and as to them he believes them to be true.

In witness whereof I have hereunto set my hand and notarial seal.

[L. S.] CHARLES W. GREENLEAF,
Notary Public.

EXHIBITS ANNEXED TO ANSWER OF HILL.

EXHIBIT A.—*Filed Dec.* 6, 1879.

Copy of vote of December 26, 1862.

"Voted, The treasurer, William Hill, be, and hereby is, authorized to purchase the following certificates of stock in the guarantee capital of this company at par: No. 222, 225 shares; No. 223, 50 shares; No. 224, 57 shares; No. 225, 64 shares; No. 226, 33 shares; No. 227, 5 shares; amounting in all to 434 shares of the value of $43,400, and the said Hill is authorized to issue company notes for same, payable on demand, and bearing semi-annual interest."

EXHIBIT B.—*Filed Dec.* 30, 1879.

COPY OF CHARTER OF PISCATAQUA MUTUAL FIRE AND MARINE INSURANCE COMPANY, EXCEPT THE SECTIONS REPEALED IN 1862.

ACT OF 1855, CHAPTER 535.—An act to incorporate the Piscataqua Mutual Fire and Marine Insurance Company.

23 Be it enacted by the Senate and House of Representatives in legislature assembled, as follows:

SECT. 1. Abner Oakes, John N. Goodwin, Shipley W. Ricker, Oscar K. Grant, Granville C. Wallingford, with their associates and successors, are hereby created a body corporate by the name of the Piscataqua Mutual Fire and Marine Insurance Company, with all the rights and powers incident to such corporations.

SECT. 2. In addition to the general powers and privileges of a corporation, as contained in the first section of the seventy-sixth chapter of the revised statutes, the corporation hereby created shall have power, by instrument under seal, or otherwise, to make insurance on vessels, freights, money, goods, wares, merchandise, bottomry, respondentia interest, and all other insurance appertaining to or connected with marine or inland navigation risks and transportation risks, to make insurances on all descriptions of property, real and personal, against loss or damage by fire, whether the same shall happen by lightning, accident, or any other means except the design of the insured, or by the invasion of an enemy or insurrection of the citizens of this or any other of the United States, and to cause

themselves to be reinsured against any risks upon which they shall have made insurance.

SECT. 3. All corporate powers of said company shall be exercised by a board of directors, and such officers and agents as they may appoint. The said board shall consist of such a number of citizens—not less than five—of this and other States as the members of said company may determine at the annual meetings of the said corporation, a majority of which number shall be citizens of this State; and the said company may, at their annual meeting, determine the number of directors who shall constitute a quorum for the transaction of business, and may authorize the board of
24 directors to appoint committees, with such powers as they may judge expedient not inconsistent with the laws of this State.

SECT. 4. The board of directors shall superintend the concerns of said company and shall have the management of the funds and property thereof and of all matters and things thereunto belonging not otherwise provided for by said company. They shall have power, from time to time, to appoint a secretary, treasurer, and such other officers, agents, and assistants as to them may seem necessary, and prescribe their duties, fix their compensation, take such securities from them as they may deem necessary for the faithful performance of their duties, respectively, and may remove them at pleasure. They shall have power to class the property insured by said company into separate and distinct classes, not exceeding four in number, and determine upon the different kind of property to be embraced in each class. They shall determine the rates of insurance and the sums to be insured upon the different kinds of property, which sums shall be expressed in the body of the policies of insurance issued by the said company, and the said company shall be liable to pay only such sums as are expressed in the said policies, in proportion as the amount insured bears to the estimated value of the property named in said policies. They shall order and direct the issuing of all policies of insurance, the providing of books, stationery, and other things needful for the office of said company and for carrying on the affairs thereof, and may draw upon the treasurer for the payment of all losses which may have happened, and for expenses incurred in transacting the concerns of the company. They shall elect one of their own number to act as president, and may hold their meetings monthly, and oftener if necessary, for transacting the business of the company, and shall keep a general record of their proceedings.

25 SECT. 8. It shall be lawful for the directors to invest the said premiums in such securities as they shall deem safe and for the interest of said company.

SECT. 9. The company, for the better security of those concerned, may receive notes for premiums, in advance, of persons intending to receive policies, and may negotiate such notes for the purpose of paying claims, or otherwise, in the course of its business; and a compensation to the assignees thereof may be allowed and paid, at a rate to be determined by the directors, but not exceeding six per cent. per annum.

SECT. 12. The board of directors may form and maintain a guarantee capital, not exceeding at any time the sum of one hundred thousand dollars in approved securities, to be held by the company, whenever the said directors shall consider it necessary and advantageous to its interest; and may allow therefor a sum not exceeding six per cent. per annum, and may

use, negotiate, or assess the same only for the purpose of paying the just debts of the company; and if it shall become necessary at any time to negotiate or assess said securities, or to call for or collect any part thereof, the sums so received shall be repaid out of the first surplus receipts of said company, with lawful interest.

SECT. 14. Any judgment obtained by the said company against the holder of any certificate shall create a lien on such certificate to the amount of such judgment, and the interest of the holder may be taken and sold by the company, on execution, in the same manner as other chattel property.

SECT. 15. No certificate shall issue unless claimed within two years from the declaration of the dividend whereof it may be evidence, but the amount shall be carried to the contingent fund of said company.

SECT. 17. In case of any loss or damage by fire happening to any member upon any property insured in and with said company, or of
26 either class, the said member shall give notice thereof in writing to the directors or some one of them, or to the secretary of said company, within thirty days from the time such loss or damage may have happened, under oath; and the said statement shall be full and particular in all its details, specifying the particular goods, wares, and merchandise lost or damaged, the numbers, amounts, and quantities of the same, and their cost, so far as it is possible to be given; if buildings, the materials, mode of construction, dimensions, and all necessary particulars relating thereto, and shall state whether he was the sole owner of the same at the time of said loss; and if it is now, was at the time of its insurance, or has since been, encumbered by mortgage or otherwise; and whether any insurance has subsisted in any other office upon the same since insurance was effected at this office; the cause or occasion of the fire, so far as is known, and the value of such parts as remain; until which is done, the amount of such loss, or any part thereof, shall not be payable; and if there shall appear any fraud in the claim made for such loss, or false swearing or affirming in support thereof, the claimant shall forfeit all benefit under his policy, except such as the directors shall see fit to allow, and the directors, upon a view of the same, or in any such other way as they may deem proper, shall ascertain and determine the amount of said loss or damage within ninety days after the notice aforesaid; and if the party suffering is not satisfied with the determination of the directors, the question may be submitted to referees, or the said party may bring an action against said company for said loss or damage; and if, upon trial of said action, a greater sum shall be recovered than the amount determined upon by the directors, the party suffering shall have judgment therefor against said company, with interest thereon from the time said loss or damage happened, and the costs of suit; but if no more shall be recovered than the amount
27 aforesaid, the said party shall recover the amount of the verdict less the costs of said company, in case their counsel shall not insist upon their lien, which costs shall be deducted therefrom; but if the lien be insisted upon, the said company shall recover their costs; provided, however, that the judgment last mentioned shall in no wise affect the claim of said suffering party to the amount of said loss or damages, as determined by the directors aforesaid; and provided, also, that execution shall not issue on any judgment against said company until after the expiration of three months from the rendition thereof.

SECT. 20. Said company may make insurance for any term not exceeding six years, and any policy of insurance issued by said company, signed by the president and countersigned by the secretary or two of the directors of said company, shall be deemed valid and binding on said company in all cases where the assured has a title in fee-simple, unincumbered, to the building, buildings, or property insured, and to the land covered by said buildings; but if the assured has a less estate therein, or if the property or premises are encumbered at the time the insurance is effected, or should thereafter be encumbered without the written consent of said company, the policies shall be void, unless the true title of the assured, and the encumbrance on the same, be expressed therein and consented to on the part of said company.

SECT. 21. The directors shall settle and determine all losses within three months after they shall have been notified as aforesaid, unless they shall judge it proper to replace the property destroyed or repair the damages sustained, which they are hereby empowered to do in convenient time, provided they do not lay out and expend in buildings or repairs more than the proportionate part of the insurance as it bears to the estimated value of the property insured, and the assured shall contribute the remainder; but no allowance is to be made, in estimating damages in any
28 case, for gilding, historical or landscape painting, stucco or carved works, nor are the same to be replaced if destroyed by fire.

SECT. 23. Alterations or enlargements may be made to buildings insured by this company, or containing property insured thereby, provided the assured shall give notice thereof in writing to the secretary, and pay such additional premium as may be required, if any; and in default of giving such notice of any alteration or enlargement affecting the risk, the policy on such buildings or property shall be void.

SECT. 24. If insurance on any house or building, or any other property, shall be and subsist in said company and in any other company, or from and by any other person or persons, at the same time, the insurance made in and by this company shall be deemed and become void, unless such double insurance subsist with the consent of the directors, signified by endorsement on the back of the policy, signified thereto by the secretary and president or two of the directors of said company.

SECT. 26. There shall be a meeting of said company at South Berwick, in the county of York, on the first Wednesday of October, annually, after the year eighteen hundred and fifty-five, or on such other day as the said company may determine hereafter, at which meeting shall be chosen, by a major vote of the members present, a board of directors, consisting of such number—not less than seven—as the members present may think proper to elect, who shall continue in office until others have been chosen and accepted the trust in their stead. All vacancies happening in said board may be filled by the remaining members until the annual meeting. Special meetings may be called by the order of the directors, or in such other manner as the by-laws therefor may have prescribed.

SECT. 28. The said Abner Oakes, Oscar K. Grant, Shipley W.
29 Ricker, and G. C. Wallingford may call the first meeting of said company, at any suitable time and place in South Berwick aforesaid, by public advertisement in any two of the towns in the county of York, or in any newspaper published therein, giving at least ten days'

notice of the time, place, and design of said meeting, for the purpose of choosing the first board of directors, of making and establishing by-laws, and of transacting any business necessary and proper to carry into effect the provisions and intentions of this act.

Approved March 17, 1855.

EXHIBIT C.—*Filed Dec.* 30, 1879.

ACT OF 1860, CHAPTER 126.—An act in addition to an act to incorporate the Pi-scataqua Mutual Fire and Marine Insurance Company.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

SECT. 1. The board of directors may increase the guarantee capital of said company to an amount not exceeding five hundred thousand dollars whenever said directors shall consider it necessary and advantageous to its interests, said guarantee capital to consist of mortgages secured upon unincumbered real estate, excepting such sum as may be required for the immediate wants of the company, which sum, not exceeding ten thousand dollars, may be held by said company in cash, or loaned by the directors upon notes secured by at least two sufficient endorsers, or by pledge of good stocks or bonds paying at least six per cent. interest, as collateral; and the said guarantee capital, when established, shall at no time be less than one hundred thousand dollars, exclusive of said last-named sum.

SECT. 2. The holders of the guarantee capital shall receive such share of the net profits of said company as may be provided by the charter and by-laws of said company and declared by vote of the directors.

SECT. 3. The directors may at any time organize one or more classes of said company upon a stock basis, but subject to all the preceding provisions as to the amount of stock and its investment.

SECT. 4. This act shall take effect from and after its approval by the governor.

Approved March 14, 1860.

EXHIBIT D.—*Filed Dec.* 30, 1879.

ACT OF 1862, CHAPTER 168.—An act in addition to an act entitled "An act to incorporate the Pi-scataqua Mutual Fire and Marine Insurance Company," and in amendment thereof.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

SECT. 1. The guarantee capital of said company shall not be less than one hundred thousand dollars, and shall be divided into shares of one hundred dollars each, and be paid in, either in money or by note secured by at least an equal amount in marketable value of the stocks, bonds, or Treasury notes of the United States, or of any of the loyal States therein, or of the stocks or bonds of any of the railroads therein, paying not less than six per cent. interest, or of the stocks of any of the banks and other corporations chartered by any of the New England States, or on mortgages upon unincumbered real estate situated in any of the New

31 England States, or a portion thereof, not exceeding ten per cent. of said capital, may be loaned upon notes secured by at least two sufficient endorsers, or upon sound collaterals. Said capital shall be vested in the name of said company, and be held for the payment of all losses and liabilities incurred by said company during the continuance of its charter or while any liabilities shall remain outstanding against it.

SECT. 2. Said company may issue scrip to the makers, as assignees, of notes for premiums, in shares of fifty dollars each, and the said notes for premiums shall be held, in common with the guarantee capital, for the losses and liabilities of the company incurred as aforesaid.

SECT. 3. The company may determine by their by-laws for the issuing and transferring of their stock and scrip, the payment of interest and dividends thereon, for the negotiation, payment, disposal, or installments of their securities and notes, the voting powers of stockholders, and for all things necessary and proper for the judicious prosecution of their business.

SECT. 4. Sections five, six, seven, ten, eleven, thirteen, sixteen, eighteen, nineteen, twenty-two, twenty-five, and twenty-seven of an act entitled "An act to incorporate the Piscataqua Mutual Fire and Marine Insurance Company," be, and are hereby, repealed.

SECT. 5. The name of the "Piscataqua Mutual Fire and Marine Insurance Company" is hereby amended by striking therefrom the word "Mutual," and the said company shall hereafter be styled and known as the Piscataqua Fire and Marine Insurance Company; and the said Piscataqua Fire and Marine Insurance Company shall retain all the rights and privileges and be subject to all the duties and obligations now belonging to the "Piscataqua Mutual Fire and Marine Insurance Company," not pertaining to insurance upon mutual principals.

32 SECT. 6. This act shall take effect and be in force from and after its acceptance by the stockholders of said company at a legal meeting called for the purpose.

Approved March 8, 1862.

EXHIBIT E.—*Filed Dec.* 30, 1879.

ACT OF 1867, CHAPTER 384.—An act to accept the surrender of the charter of the Piscataqua Fire and Marine Insurance Company.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

SECT. 1. The surrender of the charter of the Piscataqua Fire and Marine Insurance Company is hereby accepted; and its affairs shall be wound up in the manner provided in sections nineteen and twenty of chapter forty-six of the Revised Statutes, and the organization of the company shall continue for the purpose provided for in said sections; provided that so much of said acts, or the act incorporating said company, or any act amending the same, as confer any special remedies against officers or stockholders of said corporation, shall not be affected hereby; nor shall this act relieve them or any of them from any personal liabilities under any of said acts, or under any of the statutes of this State, or prevent any creditor from pursuing any remedies conferred by chapter one hundred and thirteen of the revised statutes.

SECT. 2. Actions pending against said company, when trustees are appointed as provided in said sections, may be discontinued without payment of costs, or continued, tried, and judgment rendered, as in other cases; actions may be also maintained upon claims disallowed in whole or in
33 part by the trustees; all judgments shall be satisfied in the same manner as other claims against the company are satisfied by the trustees.

SECT. 3. This act shall take effect when approved by the governor.

Approved February 28, 1867.

EXHIBIT F.—*Filed Dec.* 30, 1879.

(Revised statutes 1857. Chap. 46, secs. 19, 20, 34, 35 and 36.)

SECT. 19. When the charter of a corporation expires or is terminated a creditor or stockholder may apply to the supreme judicial court, which may appoint one or more trustees to take charge of its estate and effects, with power to collect its debts and to prosecute and defend suits at law. The court has jurisdiction in equity of all proceedings therein, and may make such orders and decrees and issue such injunctions as are necessary.

SECT. 20. The debts of the corporation are to be paid in full by such trustees when the funds are sufficient; when not, ratable to those creditors who prove their debts as the law provides or as the court directs. Any balance remaining is to be distributed among the stockholders or their legal representatives in proportion to their interests.

SECT. 34. When such a corporation has unlawfully made a division of any of its property, or has property which cannot be attached, or is not by law attachable, any judgment creditor may file a bill in equity in the supreme judicial court, setting forth the facts and the names of such persons as are alleged to have possession of any such property or choses in action, either before or after division. Service is to be made on the persons so named as in other suits in equity. They are, in answer thereto, to disclose on oath all facts within their knowledge relating to such
34 property in their hands, or received by a division among stockholders. When any one of them has the custody of the records of the corporation, he is to produce them and make extracts therefrom and annex to his answer, as the court directs.

SECT. 35. The court is to determine, with or without a jury, whether the allegations in the bill are sustained, and it may decree that any such property shall be paid to such creditor in satisfaction of his judgment, and cause such decree to be enforced as in other chancery cases. Any question arising may, at the election of either party, be submitted to the decision of a jury under the direction of the court.

SECT. 36. The court may allow the bill to be amended, by striking out or adding names of defendants, and may award costs at its discretion.

And on the said sixth day of December, A. D. eighteen hundred and seventy-nine, is filed the following

Replication.

Complainant's general replication to answer of defendant Hill.

Complainant, for such general replication, says:

Complainant's said bill and all the allegations thereof are true and sufficient in law to entitle him to the relief prayed for, and said answer and all the allegations thereof, except so far as it confesses or admits the allegations of said bill, are untrue, uncertain, and insufficient in law.

By his solicitor,

W. L. PUTNAM.

And on the first day of March, A. D. eighteen hundred and eighty, publication of the testimony is ordered, as follows:

35

PORTLAND, *Jan'y* 8, 1880.

DEAR SIR: I have this day filed in U. S. circuit court, as evidence in Bowker vs. Hill—

1. Copy of act approved March 8, 1862.
2. " " February 28, 1867.
3. " record Bowker vs. Hill, in York Co.
4. " disclosure of W. Hill, same case.
5. " 5th page, Ledger A.
6. " certificate 222.
7. " certificate 236.
8. " dividend account.
9. " records of annual meetings A. D. 1863 and A. D. 1864, with statement of financial condition.

Very truly,

W. L. PUTNAM.

HON. J. H. DRUMMOND.

P. S. The above is all my evidence in the case, except in rebuttal. I shall expect the case to be closed according to the rules, so as to be in season to be argued in April.

W. L. P.

36

Copy of record Bowker v. Hill in York Co.

STATE OF MAINE, *York, ss:*

37 At the supreme judicial court (the same also having jurisdiction of all matters and things cognizable by a supreme court of probate), begun and holden at Saco, within and for the county of York, on the first Tuesday of January, being the 2d day of said month, anno Domini 1872, by the honorable Rufus P. Tapley, justice.

ALBERT BOWKER, OF BOSTON, IN THE COUNTY of Suffolk and Commonwealth of Massachusetts, plaintiff,

against

WILLIAM HILL, OF NORTH BERWICK, IN SAID county, and Shipley W. Ricker, of South Berwick, in said county of York, defendants.

In scire facias for that whereas, by the consideration of our justices of

our supreme judicial court holden at Saco, in said county of York, on the first Tuesday of January, in the year of our Lord one thousand eight hundred and sixty-eight, recovered judgment against the Piscataqua Fire and Marine Insurance Company, of South Berwick, Maine, a corporation created and established by the laws of the State of Maine, having its principal place of business at South Berwick, in the county of York, for the sum of five thousand sixteen dollars and forty-four cents debt or damage and eighty-two dollars and seventy-seven cents costs of suit, which judgment was entered upon the fourth day of April, A. D. 1868.

And whereas, by the consideration of the same court, judgment and execution were likewise awarded against the goods, effects, and credits of the said Piscataqua Fire and Marine Insurance Company in the hands and possession of William Hill, of North Berwick, in said county of York, and Shipley W. Ricker, of South Berwick, as trustees of said Piscataqua Fire and Marine Insurance Company, as by the record thereof appears, and the said Hill and Ricker were, at the commencement of the original suit in which said judgment was recovered, resident in said county of York (in which the original writ by which such suit was commenced was returnable), and were both duly summoned as trustees therein, as by
38 the officer's return on said writ appears; but said Hill and Ricker did not either of them appear at the return term, when said original suit was entered, but (without any reasonable excuse therefor) neglected so to appear and to submit to examination as by law and said precept required, whereby and by force of the statute in such case made and provided they became and are liable to pay all costs afterward arising in said suit out of their own goods and estate, the plaintiff having recovered judgment as aforesaid, and said costs not having been paid out of the goods or effects in the hands of said Hill and Ricker belonging to said Piscataqua Fire and Marine Insurance Company, and said Bowker claims to recover said after-accruing costs in this action, to wit, the sum of dollars and cents.

And whereas said Albert Bowker afterwards, at Alfred, in said county of York, on the eighth day of April, in the year of our Lord one thousand eight hundred and sixty-eight, purchased out of the clerk's office of our said court our writ of execution upon that judgment in due form of law, returnable into the clerk's office of said supreme judicial court for said county of York, within three months from the date thereof, directed to the sheriffs of our respective counties, or either of their deputies, commanding them to serve, execute, and return the same according to the precept thereof. And whereas the said writ of execution was afterwards, at said Alfred, to wit, at Saco aforesaid, on the same day delivered to one Leonard Emmons, then and ever since a deputy under Richard H. Goding, sheriff for said county of York, within thirty days next after the aforesaid judgment, who thereafterwards, on the first day of May, A. D. 1868, made a demand upon the said Hill and Ricker, severally, and required the said Hill and Ricker, and each of them, to discover and deliver the goods, effects, and credits of
the said Piscataqua Fire and Marine Insurance Company in their
39 hands, and in the hands of each and either of them, to be taken in execution for the satisfaction of the said judgment, which the said Hill and Ricker, each and both, then and there refused to do and did not do, whereupon, on the eighth day of July, 1868, the said Emmons, in his

said capacity of deputy sheriff, made return upon the said execution, and upon said eighth day of July delivered it into the clerk's office of our said court with said return thereon as follows, viz:

"STATE OF MAINE, *York, ss:*

"JULY 8, A. D. 1868.

"By virtue of this execution I, the undersigned, then and ever since holding this execution, on the first day of May, A. D. 1868, demanded of the within-named Shipley W. Ricker and of William Hill, the within-mentioned trustees, the goods, effects, and credits of the Piscataqua Fire and Marine Insurance Co., in the hands of them or of each or either of them; and they and each of them did not pay, deliver, nor expose to me the said goods, effects, nor credits, nor any portion thereof, but neglected to comply with my said demand. I made demand of said Ricker personally (on said first day of May, A. D. 1868) thathe pay and deliver to me the goods, effects, and credits of the Piscataqua Fire and Marine Insurance Company in his hands, and for which he is liable, which he refused to do as aforesaid; and after diligent search I was unable to find the said William Hill within this State, and was informed, upon inquiry at his residence, and also at his office or counting-room, that he was out of this State; thereupon I (then holding this execution), on said first day of May, 1868, left a true and attested copy of this execution (with notice to said Hill endorsed thereon, and signed by me, signifying that he is required to pay and deliver towards satisfying this execution the goods, effects and credits of said Piscataqua Fire and Marine Insurance Company, and for which he is liable)at the dwelling-house and last and usual place of abode of said William Hill, in North Berwick, in the county of York, and State of Maine, but he has not complied with said demand, but neglected and refused so to do. And now, on this eighth day of July, A. D. 1868, neither of the within-named trustees having complied with the aforementioned demand, and after diligent search I am unable to find any property of the Piscataqua Fire and Marine Insurance Company within my precinct wherewith to satisfy this execution. I therefore return the same wholly unsatisfied.

"LEONARD EMMONS,
"*Deputy Sheriff.*"

Fees: Service, $1.00; 50 m's travel, 2.00; copies, 1.00.

As by the writ of execution, and the officer's return thereon, now on file with our said supreme judicial court (for said county) records appears.

And the same judgment remains wholly unsatisfied, and not reversed or annulled, as the said Albert Bowker hath suggested; by means of all which the said Albert Bowker is in danger of losing all benefit from said judgment so recovered as aforesaid.

This action was entered at the September term, A. D. 1868, and the defendants appear by their attorney.

Now the said plaintiff, by leave of court, discontinues this suit as to the said Shipley W. Ricker, one of said defendants, without costs.

The action is thence continued to the January term, 1869.

Now the parties appear and, by agreement, submit the cause to the

hearing and determination of the court of law on report of the presiding justice, and the action is marked "Law," and continued from term to term to the present term.

41 And now, on the twenty-ninth day of January, A. D. 1872, the clerk of the supreme judicial court for the western law district certifies that this action was entered in said court at the July term, A. D. 1869, for adjudication upon questions of law arising in the cause, and now, after the cause has been argued, and after mature deliberation and advisement thereon, it is considered by the court that the following entry be made under said action, namely:

"Defendant discharged as trustee. Execution to issue against him for costs."

It is therefore considered by the court that the said Albert Bowker recover against the said William Hill his costs of suit, taxed at .

Certif. of opin. rec'd Jan. 30, 1872.

Ex'on.

Attest:

AMOS L. ALLEN, *Clerk.*

STATE OF MAINE, *York, ss:*

CLERK'S OFFICE, SUP. JUD. COURT,
Alfred, Dec. 17, 1879.

I, Amos L. Allen, clerk of said court, hereby certify the foregoing to be a true copy of record.

Witness my hand and the seal of said court.

Attest:

AMOS L. ALLEN, *Clerk.*

Copy of disclosure of William Hill.

S. J. C., York County.—January term, 1869.

ALBERT BOWKER }
v. } *Sci fac.*
WILLIAM HILL. }

42 And now the said William Hill comes and discloses upon affirmation, and says that at the time of the service of the writ in the original suit, to wit, on the eighth day of June, A. D. 1866, he had no goods, effects, or credits of the said Piscataqua Fire and Marine Insurance Company in his hands or possession, unless it shall otherwise appear in the following disclosure:

1. Did the company deliver and assign to you in May, 1866, 82 shares (eighty-two) of Dover & Winnepisseogee R. Co. stock? If yes, on what consideration, and what have you done with it?

Ans. About that time said company did assign to me 82 shares of said stock. I have sold it, since June 8, 1866. I originally owned said railroad stock, and on the first day of June, A. D. 1863, I assigned it to said insurance company, and a certificate of stock of said insurance company for 82 shares was made out to me (certificate No. 236). When the rail-

road stock was transferred to me by the company I returned the said insurance co. stock as the consideration therefor.

2. How much did you receive for said railroad stock?

Ans. I sold it to Boston and Maine Railroad Company and took their note for it at $100 a share, payable in ten years, with interest at six per cent., payable semi-annually.

3. At the time when you took the certificate of stock of defendant company, June 1st, '63, did you deposit your note for the same, or what consideration, if any, did you give for the same except the railroad stock?

Ans. I did not. None other.

4. By what authority, and why, was the exchange made in April or May, 1866? Please examine the journal now present and give the precise date of the exchange.

Ans. The date was May 5, 1866. It was authorized by vote of
43 the directors of said company May 5, 1866, a copy of which vote is hereunto annexed as a part of this disclosure.

5. What was the alleged contract of June 1, '63, therein alluded to? Was the contract in writing? If so, where is it, and where did you last see it?

Ans. The contract was in writing. The last time I saw it was at the directors' meeting, May 5, 1866. I do not know where it is. I cannot tell what the contract was. I surrendered it to the company at that time (May 5, 1866). I think, but am not certain, that the contract provided that the said railroad stock should be returned to me on demand in exchange for the insurance company stock. There were other provisions in it, but I cannot tell what, and I cannot say certainly that what I have stated was in it; but that is according to the best of my recollection.

6. State distinctly what was the nature and purpose of the whole transaction relative to the 82 shares.

Ans. I have stated all I know about it.

7. Who signed the paper of June 1, '63, and by what vote of the directors was it authorized?

Ans. I am not certain; my impression is it was signed by the president and secretary. I cannot say whether there was any recorded vote of the directors about it. I think they agreed to it, but have no recollection upon this point.

8. Were you treasurer of said company? If yes, from what time to what time?

Ans. Yes; from before 1863 till the papers went into the hands of the receivers, about May, 1867.

9. As said treasurer, what books were under your charge? In what books were your treasurer accounts kept?

Ans. I did not personally keep any books. The books were all kept at the office by a general book-keeper.

10. While you were treasurer were you not also a director?
44 Ans. I was.

11. Were not proper directors' records kept at all times, and where are the records now?

Ans. Records were generally kept. The book here present contains those records, so far as I have any knowledge.

12. Please examine the same and state whether there is any record of any action authorizing the contract of June 1, '63.

Ans. I do not find any such record.

13. How many directors were there May 5, '66, and how many were required to constitute a quorum?

Ans. Nine. I do not remember how many constituted a quorum. By the by-laws I find three constituted a quorum, and I think the charter has the same provision. There were six present at that meeting, viz, David Fairbanks, Woodbridge Odlin, Joseph G. Goodwin, William Hill, Shipley W. Ricker, and Abner Oakes.

14. How long had you owned Dover and Winnepisseogee R. R. Co. stock previous to June 1, '63, and what dividends had it been paying to that time?

Ans. Several years. I had not paid any till we leased the road to the B. & M. Railroad Co., and then it paid six per cent. I don't think I had received any dividends when I transferred it to the insurance company, but I do not know.

15. Was it paying dividends when you took it back from the insurance company?

Ans. It was.

16. Did you receive dividends from the 82 shares of the insurance co. stock while you held it? If so, at what rate and what years?

45 Ans. I did for certain years receive the interest of six per cent. authorized to be paid on the guarantee stock, which this was. I cannot remember what years, but think in 1864 and 1865.

17. Was not the whole capital stock called guarantee stock during those years? And were any other dividends received than the interest, as you call it, by any stockholders?

Ans. It was. There were not, to my knowledge.

18. About how much guarantee stock was there in 1865–'6?

Ans. I don't know. The books show about $225,000.

19. Did the company fail, and when?

Ans. Yes. In May, 1866; the directors voted to suspend May 21, 1866.

21. Were you present at directors' meetings held April 27, '66, and May 5, '66?

Ans. I don't remember. The record shows I was.

22. At the meeting April 27, '66, were not certain stocks and other property authorized and directed to be transferred to secure previously existing debts of the company? If so, to what amount?

Ans. I don't remember. The records show that "the treasurer be authorized to hypothecate and pledge any of the securities of the company to secure the following company notes, viz:

No. 131, for	$5,000
" 134, "	4,000
" 146, "	2,000
" 147, "	5,000
" 154, "	10,000
" 155, "	20,000
" 158, "	15,000
46 No. 159, for	10,000
" 160, "	3,000
" 161, "	1,000

" 162,	"	2,000
" 163,	"	7,000
		$84,000

And the president and secretary are hereby authorized to transfer the said securities for this purpose."

23. I ask the same question as to the meeting of May 4, '66.

Ans. I don't remember. The records show "that the treasurer be authorized to hypothecate and pledge any of the securities of the company to secure the following company notes, viz:

No. 104,	for	$162 00
" 136,	"	720 00
" 137,	"	3,269 00
" 138,	"	834 00
" 139,	"	558 00
" 140,	"	162 00
" 141,	"	87 00
" 142,	"	90 00
" 143,	"	90 00
" 144,	"	600 00
" 149,	"	2,500 00
" 151,	"	2,000 00
" 157,	"	2,000 00
" 166,	"	3,821 50
" 164,	"	10,000 00
" 165,	"	11,272 00
" 150,	"	2,000 00

And the pres't and sec'y are hereby authorized to transfer said securities for this purpose."

24. What amount of property in gross was transferred under those two votes?

47 Ans. I don't know. The receivers have the records and papers which show. I am informed that those papers and records show the amount (at par value) to be about $160,000.

25. Do you know of any other vote of the directors between Jan. 1, '66, and the time the trustees took possession, authorizing the transfer of any other collaterals; if yea, what votes? Please examine records for that purpose.

Ans. I have no recollection of any. The records show that at meeting Mar. 30, 1866, it was voted "that the treasurer, pres't, and sec'y be authorized to hypothecate any of the premium notes or securities to secure a loan of $25,000 to meet losses." Vote of Jan. 26, 1866, a copy of which is annexed.

26. State particularly what property the company has transferred to you, when, and on what consideration.

Ans. I annex hereunto a schedule, marked "A," of the property transferred to me and in my possession June 8, 1866. I also annex schedule, marked "B," showing amount I had received at that date from sales of property transferred to me by said company, and the notes held by me against the company as collateral security, for which all the property in

said schedules was transferred or assigned to me. I shall desire, before closing this disclosure, to show particularly how a portion of the notes in this schedule were secured. The dates of the transfer were about April 27, 1866, and May 5, 1866, in accordance with the votes of those dates.

27. Were any of said transfers made to you to secure—

Note dated July 6, '61		$2,100 00
"	Aug. 20, '61	2,000 00
"	Feb. 1, '66	21,200 00

or were you ever authorized by any vote to hold them as security for said notes, or either of them?

48 Ans. The first two notes were not covered by any such votes; but I held them previous to June 8, 1866, and before that time had collected notes, and in my account with the company applied the proceeds of the notes collected to the payment of those two notes, as per schedule B. The note for $21,200 was held in the same way, and no such vote of the directors includes that. I had on said eighth day of June collected enough to pay that note of $21,200, as shown in schedule B. There was no transfer of property to secure these notes.

28. How much have you received to the present time on said collaterals, and what of them now remain in your hands?

Ans. In addition to the amount in schedule B ($34,336), I have collected $34,166.87; total, $68,502.87. I annex a schedule, marked "C," of those remaining unpaid.

29. Who has received the dividends and other income of said collaterals since June, 1866?

Ans. So far as I have received any dividends or income, it is included in the account and in the amount given in my answer to the last question.

30. How much do you now claim to be due (Jan. 20, '69), including balance of interest account and including all the notes in schedule B?

Ans. I have no such account made up; not including interest on my notes, there is due $17,047.79; the interest will carry it up beyond $20,000.

30. Please produce note of Feb. 1, '66, for $21,200, also the $2,000 and $2,100 notes of 1861.

Ans. They are not here. I will hereafter file in the case copies of those notes.

31. What was the number of the $21,200 note?

Ans. No. 156.

32. What was the consideration of this note? Explain fully.

49 Ans. It was taken in consideration of the sale by me to the company of 212 shares of the company's stock, as per vote of the directors of Dec. 26, 1862, a copy of which is hereunto annexed.

33. When was said stock first issued, and by virtue of what vote of the directors?

Ans. August 1, 1862, and by virtue of vote of directors of July 25, 1862, authorizing the issue and sale of $50,000 of guarantee scrip.

34. How much stock thus authorized was issued, when, to whom, and what was the number of each person's certificate, and how much to each?

Ans.

To William Hill	No. 222,	225 shares.
To Fairbanks, Lewis & Co	No. 223,	50 "
To " " "	No. 224,	57 "

To W. Odlin	No. 225,	64	"
To S. W. Ricker	No. 226,	33	"
To Abner Oakes	No. 227,	5	"
Total		434	

This was all issued Aug. 1, 1862, except No. 227, which was issued August 5, 1862. I think, also, two shares were issued to Abner Oakes under that vote, to wit: certificate No. 220, making in all 436; there may have been others.

35. Were the above included in the amount of outstanding stock reported at the annual meeting Nov. 28, '62?

Ans. I have no recollection as to this. The books will show. The record of that report shows that this stock was included in that report.

36. What directors were present at meeting of Dec. 26, '62; was not that the first directors' meeting after the annual meeting; was not Fairbanks, the director, a partner in Fairbanks, Lewis & Co.?

Ans. Fairbanks, Hill, Odlin, Abner Oakes, Thomas Quinby, S. W. Ricker. It was not. Fairbanks, the director, was a partner in
50 Fairbanks, Lewis & Co. It was the second directors' meeting after the annual meeting, there having been one on the same day the annual meeting was held, according to the records.

37. Except as above, was there any vote authorizing the cancellation of the 212 shares, and the issuing by you of the $21,200 note therefor?

Ans. I have no recollection about it. I know of none. The records will show if there is any other recorded vote in relation to this.

38. Did you receive the dividends or interest on said stock until you surrendered it?

Ans. I think I did. Dec. 23, 1864, the journal shows that I received interest on No. 222, and on Feb'y 2, 1865, I received $900 interest on this certificate, according to the journal, and also July 27, 1865, $900.00; also by note as stated in answer to question 50. The interest account was made up from June 1, 1863, to Nov. 1, 1864.

39. Was the $21,200 note actually issued the day it bears date, Feb. 1, '66?

Ans. Yes; I think I am certain about it, but I have no special recollection about it.

40. What were the dates of notes on your bill-book, Nos. 154 and 155?

Ans. The book shows No. 154 was Feb'y 9, 1866, and No. 155, Feb'y 8, 1866; and No. 156 was dated, as appears by the book, Feb'y 1, 1866. No. 157 was dated, as appears by the book, April 5, 1866.

41. What was the date of the cancellation of the certificate? Examine the original and answer upon thus refreshing your recollection.

Ans. It looks as if it was written April 27, 1866, and then Feb'y 1, 1866, written over it. The note was given before the cancellation was actually written upon the back of certificate No. 222.

51 42. Will you say the note was given as early as Feb. 1, '66? And when was the cancellation in fact written?

Ans. I will not. I cannot tell from recollection, nor in any other manner than what I infer from what is written on the certificate. My recol-

lection was, before looking at the note-book, that the note was actually given the day it bears date; it must have been given about that time.

43. Please annex copy of note 156.

Ans. The following is a copy:

$21,200.00.] "OFFICE OF THE PISCATAQUA FIRE AND MARINE INSURANCE COMPANY,
South Berwick, February 1st, 1866.

"On demand from date, the Piscataqua Fire and Marine Insurance Company, by their treasurer, promise to pay William Hill, treas'r, or bearer, twenty-one thousand two hundred dollars no cents, at the office of said company, and interest semi-annually.

"WILLIAM HILL, *Treasurer.*

"Countersigned by S. W. RICKER, *Sec'y.*

"No. 156. This note is given for certificate No. 222, said company's stock."

($11.60 in revenue stamps affixed.)

44. Please examine "stub" of note No. 156, company's note-book, and say in whose handwriting are the words thereon "issue not approved."

Ans. In Shipley W. Ricker's.

45. Please examine your journal B, p. 372, and state what are the entries there relative to the cancellation of this stock and issuing this note.

Ans. "Feb. 21. CR.

(86.) Bills payable. By note No. 156..... $21,200

DR.

(1.) Capital stock to 212 shares company stock, cert. No. ... 21,200"

46. What are the dates of the next previous and the next subsequent entries?

52 Ans. The book shows the previous date is Ap'l 25, 1866, and the next subsequent is Ap'l 26, 1866.

47. Was or not the following entry on same journal made by your direction or consent, viz: under date of May 11, '66, "Bills payable to note 156 in treasurer's hands, $21,200; capital stock, by note 156 in treasurer's hands, $21,200?"

Ans. There appears on the book such an entry. I never saw it till it is now exhibited. It was not made by my direction or consent, but without my knowledge.

48. In whose handwriting is it?

Ans. I don't know.

49. Is it not in the same handwriting as the other entries in the journal?

Ans. It is.

50. What was the consideration of note No. 137 for $3,269 claimed by you?

Ans. For stock interest due Nov. 1, 1865, or before, on certificates of stock Nos. 212, 213, 222, 218, 236, and 283, as shown by the journal.

Schedule C, annexed, was made April 20, 1867, and there have been some payments thereon since, as indicated by pencil marks thereon, and I modify my foregoing answers accordingly.

Schedule A contains a list of the collaterals, &c., transferred to me by the company, as hereinbefore stated. They consisted of notes of third parties secured by mortgage or by a pledge of securities, the persons giving the notes having the right to the securities upon the payment of their notes. The only securities (other than individual notes) which the company owned absolutely at the time of the transfer to me as shown by Schedule A, were as follows:

53

City of Bath bonds	$2,000 00
" " Portland bonds	1,500 00
Thirty shares of the capital stock of South Berwick National Bank	1,500 00
U. S. 7-30 note	100 00

Upon these no third persons had a right of redemption; upon all the others transferred to me third parties had a right of redemption, and I held them subject to that right, and as security for the payment of their notes or debts to the company.

I annex a copy of the by-laws of the company as a part of this disclosure.

The $20,000 note (No. 5, in Schedule B,) was given as collateral security for my individual endorsement of three notes of the same date, one for $6,000, payable in four months, one for $6,000, payable in five months, and one for $8,000, payable in six months, all without interest, and which I paid as they fell due, after the trustee writ was served on me.

The $15,000 note was given as collateral for my individual endorsement of a note for same amount and of same date (April 17, 1866), payable in four months, without interest, and which was paid by me when due.

Notes in Schedule B for $11,272, and $10,000 (Nos. 7 and 8) were given to me for money lent the company.

WILLIAM HILL.

STATE OF MAINE, *York, ss:*

JAN'Y 22, 1869.

Subscribed and sworn to before me.

JOSIAH H. DRUMMOND,
Justice of the Peace throughout the State.

54 *Copy of vote of the directors, referred to in answer to the 4th interrogatory.*

"Voted unanimously, that the president and secretary be directed to carry into effect the contract with William Hill, according to the obligation of said company under date of June 1, 1863, and that they be authorized and directed to transfer to William Hill eighty-two shares of the Dover and Winnepisseogee Railroad Co., and to Woodbridge Odlin thirty shares in the North Berwick National Bank and two $1,000 United States 1881 bonds."

Copy of vote of January 26, 1866, referred to in answer to 25th interrogatory.

"Voted, the treasurer be authorized to issue No. 154 for $10,000, No. 155 for $20,000, the latter secured by $25,771.12 of marine notes."

Copy of vote of December 26, 1862, referred to in int. 32.

"Voted, the treasurer, William Hill, be, and hereby is, authorized to purchase the following certificates of stock in the guarantee capital of this company, at par:—No. 222, 225 shares; No. 223, 50 shares; No. 224, 57 shares; No. 225, 64 shares; No. 226, 33 shares; No. 227, 5 shares; amounting in all to 434 shares of the value of $43,400, and the said Hill is authorized to issue company notes for same, payable on demand and bearing semi-annual interest."

55 A.

List of collaterals deposited by Piscataqua Fire and Marine Insurance Company with William Hill, as security for the payment of notes held by him, and remaining in his hands or possession on the 8th day of June, 1866.

Note of	David L. Stevens (with R. R. stock security).....	$1,000
"	Oscar D Wetmore (with telegraph stock security), bal. due on.....	1,164
"	Wm. R. Porter (with R. R. bonds security).....	2,000
"	E. H. Atwood (with bank stock security).....	1,000
"	W. W. Stickney (with R. R. stock security).....	3,000
"	Mary R. Wallingford (with R. R. and bank stock security)	1,300
"	Edward Hayman (with bank stock security).....	500
"	John Plumer (with bank stock security).....	5,000
"	Wm. Deering (with c'nty war'nt and bond and city bond security)	2,000
"	Benjamin Farr (with bank stock security).....	500
"	Jas. G. Brackett (with city bonds security).....	500
"	Leonard Andrews (with R. R. bond security), note $1,300, was pledged to me for $500, and the security of bonds was for same sum.....	500
"	Gilman S. Bennett (with R. R. bond security).....	500
"	George R. Bradford (" " stock ").....	500
"	Newell Gibbs (with R. R. stock security).....	500
"	Alvin Bacon (with mortgage security).....	1,000
"	John S. Chadwick (with mortgage security).....	100
"	Asa Small, " "	1,000
"	Solomon A. Plumer, " "	300
"	Hannah M. Luques (with city bonds and gas-light stock securities), note for $1,000, pledged to me for $400, and securities were for same amount.....	400
	" John H. Burleigh (with bank stock security).....	500
56 Note of	Geo. W. Brown (with bank and R. R. stock security)	2,000
	" Joseph Morrill (with bank and R. R. stock security)..	2,000
"	Addison Gott (with bank stock security).....	500
"	Putnam and Chase (with man'g co. stock security).....	6,000
"	Woodbridge Odlin (with bank st'k security).....	2,500
"	Charles H. Wiggin (with bank and packet co. stock security).....	1,000

"	Ammi R. Mitchell (with R. R. stock security)	2,500
"	do. (" do. ")	2,500
"	do. (" telegraph ")	2,500
"	Thomas Day	75
"	Benjamin Ladd (with J. J. Weeks, Geo. Weeks, and J. J. Bond as sureties)	100
Note and mortgage of	Archelaus Jackson	300
" "	Joseph McIntire	300
" "	Harriet and Rufus Small	1,000
" "	Otis I. Hall	500
" "	Abner Oakes	200
" "	do.	200
" "	do.	300
" "	George Latham	500
" "	Ephraim Penny	300
" "	E. S. Clark	100
" "	Thomas B. Ellis	1,000
One share of the First Nat. Bank, Biddeford (pledged by B. E. Cutter)		100
One share of the Biddeford Gas-Light Co. (pledged by B. E. Cutter)		100
U. S. compound interest notes (pledged by Oliver Stackpole)		900
Thirty shares of the Cochecho Bank (pledged by Joseph Morrill)		3,000
57	City of Bath bonds	2,000
	City of Portland bonds	1,500
Thirty shares of the South Berwick National Bank		1,500
U. S. 7-30 Treasury note		100
Nineteen shares Kinsman St. R. R. stock, par value $50, (pledged by Wm. R. Porter)		900
		$59,739

(Endorsed:) Bowker v. Hill. Schedule A. Annexed to disclosure of William Hill. J. H. D.

B.

Piscataqua Fire and Marine Insurance Company in account with William Hill.—Account to June 8, 1866.

Dr.

1. To note dated July 6, 1861, on demand, with interest semi-annually	$2,100 00		
Int. paid to Nov. 1, '65—7 m. 7 d. Int. from Nov. 1, '65, to June 8, '66	76 34		
		$2,176	34
2. To note dated August 20, 1861, on demand, with int. semi-annually	2,000 00		
Int. paid to Nov. 1, '65—7 m. 7 d. Int. from Nov. 1, '65, to June 8, '66	72 70		
		2,072	70

	3. 137 to note dated Dec. 1, '65, on demand, with interest semi-annually	3,269 00	
	6 mos. 7 d. int., from Dec. 1, '65, to June 8, '66	102 00	
			3,371 00
58	4. 156 to note dated Feb. 1, 1866, on demand, with interest semi-annually	21,200 00	
	4 mos. 7 d. int., from Feb. 1 to June 8, 1866	448 73	
			21,648 73
	5. To note dated Feb. 8, '66, on demand, with interest semi-annually	20,000 00	
	4 mo. int., Feb. 8 to June 8, '66	400 00	
			20,400 00
	6. To note dated April 17, '66, on demand, with interest semi-annually	15,000 00	
	1 mo. 21 d. int., from April 17 to June 8, '66	127 50	
			15,127 50
	7. To note dated May 1, '66, on 6 mo.—due Nov. 4, '66	11,272 00	
	4 mo. 26 d. discount, from June 8 to Nov. 4, '66	274 28	
			10,997 72
	8. To note dated May 1, '66, on 6 mo.—due Nov. 4, '66	10,000 00	
	4 mo. 26 d. discount, from June 8 to Nov. 4, 1866	243 33	
			9,756 67
			$85,550 66

Cr.

	By William Hill, for guaranteed stock note collected	$21,000 00
	William Hobbs.....do	$1,000 00
	R. M. Chapman.....do	800 00
	Harriet Small.....do	500 00
	John H. Small.....do	400 00
	Elizabeth Cole.....do	400 00
	J. S. Ricker.....do	3,000 00
	Do. .....do	1,000 00
	Thomas H. Cole.....do	500 00
	Stephen Locke.....do	400 00
	Thomas Day.....do	1,400 00
	Addison Gilbert.....do	700 00
59	George J. Marsh, for guaranteed stock note collected	600 00
	Ezra Ames.....do	500 00
	C. A. Staples.....do	200 00
	C. H. Milliken.....do	1,000 00
	F. Quinby.....do	200 00

"	Otis F. Hall.....do.....	500
"	Abner Oakes.....do.....	200
"	do. .....do.....	200
"	do. .....do.....	300
"	George Latham.....do.....	500
"	Ephraim Penny .....do.....	300
"	E. S. Clark.....do.....	100
"	Thomas B. Ellis.....do.....	1,000
"	John Plumer, with bank stock securities, balance due on, *u*.....	1,000
"	Hannah M. Luques, with city bonds and gas-light co. stock securities, balance due on, *v*.....	400
"	George W. Benn, with bank stock security, which is trusteed, balance due, *w*.....	1,000
"	Joseph Morrell, with bank stock security, which is trusteed, balance due.....	2,000
"	Putnam & Chase, with man'g co. stock security..	6,000
"	Woodbridge Odlin, with bank stock security.....	2,500
"	Charles H. Wiggin, with bank and packet co. stock security	1,000
Thirty shares of the Cocheco Bank pledged by Jos. Morrell, par value, $100		3,000
Thirty sh's of the South Berwick Nat'l Bank, par val. $50.....		1,500
		$28,926

63 *Extracts from report of the president and directors of the Piscataqua Fire and Marine Insurance Co. to the stockholders, made to the first day of Nov.*, 1865.

Extract from records of Piscataqua F. & M. Ins. Co.

P. 452.

SCHEDULE C.—BUSINESS.

Business for the year ending Oct. 31, 1865.

Am't at risk Nov. 1, 1864, fire.....	$83,200,563	
Do. do. marine.....	540,773	
		$83,741,336
Am't insured during the year, fire.....	4,926,426	
marine.....	2,558,433	
		7,484,859
		11,226,195
Am't r'ks term'd during the year, marine...	3,113,119	
fire.....	2,292,371	
		5,405,490
A'mt at risk Nov. 1, 1865.....		$85,820,705

u. 5-20, 300; 1-27, 600.
v. Collected $27 from coupons of city bonds 9-23-67.
w. 10-9-67, $1,000.

Am't marine premiums for the year.....	$93,824 63	
fire do. do.	62,452 23	
		$156,276 86
Am't marine premiums terminated for year..	$80,287 59	
fire do. do. ..	33,570 19	
		$113,857 78
Am't marine premiums not terminated.....	$45,242 49	
fire do. do.	70,165 41	
		$115,407 90

P. 456.

SCHEDULE C.—PROFIT AND LOSS AND COMPANY'S STANDING.

PROFIT AND LOSS.

DR.

Officers, directors, &c.....	$82,199 95
Postage, expressage, &c.....	356 50
64 Printing, stationery, &c	1,945 51
Marine losses	75,291 88
Fire losses.....	24,803 67
Expenses.....	1,560 47
Commissions	17,893 22
Returned premiums, &c	10,365 88
Interest, discount, &c	3,914 70
Office rent, &c	118 37
General agency.....	1,924 67
Taxes	4,811 06
Stock interest.....	15,259 85
	$160,445 73

CR.

Marine premiums	$93,824 63
Fire premiums.....	62,452 23
Accrued interest.....	1,555 08
Balance	2,613 79
	$160,445 73

COMPANY'S STANDING.

DR.

Capital stock	$89,894 50
Bills payable	11,662 00
Interest scrip	372 00
	$101,928 50

CR.

Collection account	$73,194 51
Revenue stamps	35 80
Suspense	648 30
O. D. W. coll. acc't	342 15
Due on open policies	1,249 40
Cash due from agents	2,163 11
D. Fairbanks & Co.	8,751 66
Cash on hand	4,930 04
Balance	10,613 53
	$101,928 50

65 (Endorsed:) S. J. C. York Co. Jan. term, 1869. Albert Bowker, sci. fac., v. William Hill.

It is agreed that the within is a true copy from the books of the Piscataqua Fire and Marine Insurance Company, and that it may be used in evidence in said case in the same manner as the books themselves might be.

DAVIS & DRUMMOND, *For Def't.*

STATE OF MAINE, *York, ss:*

CLERK'S OFFICE, SUP. JUD. COURT,
Alfred, Jan. 3, 1880.

I, Amos L. Allen, clerk of said court for York County, Maine, hereby certify that the foregoing is a true copy of the disclosure, with exhibits marked "A," "B," and "C," and extracts from the books of the Piscataqua F. and M. Ins. Co. annexed thereto, filed in the case of Albert Bowker in sci. fac. v. William Hill, at the January term of said court, 1869, and now on the files of said court with the papers in said case.

Attest:

AMOS L. ALLEN, *Clerk.*

Copy of fifth page, ledger A.

GUARANTEE CAPITAL.

1862.			
Nov.	1.	To amount brought forward	$150,500
"	1.	" John N. Goodwin, 334	300
	April 29.	" Ex'x estate of E. Morse, 391	500
66	May 13.	To Shipley W. Ricker, 396	500
	Nov. 1.	" Susan H. Goodwin, 401	1,800
"	" "	Somersworth Savings Bank, 401	300
1863.			
June	1.	" D. Fairbanks, 408	1,500
"	1.	" Woodbridge Odlin	5,000
"	1.	" William Hill	8,200
Oct.	31.	" Fairbanks, Lewis & Co., 453	1,000
"	" "	Ellen M. Kingsbury, guardian, 456	1,500

Aug.	28.	"	Elisha N. Perrett, 457	2,100
Nov.	2.	"	M. R. Wallingford	1,000
"	"	"	J. G. Goodwin	500
1864.				
Jan.	9.	"	Geo. R. Bradford, No. 250	500
	9.	"	Esra Eames, No. 249	500
	7.	"	Thos. D. Locke	800
	13.	"	Harriet Small	500
	16.	"	John Nason	900
	16.	"	John Nason	300
	13.	"	Wm. R. Porter, No. 253	1,000
	"	"	" " " No. 254	1,000
	"	"	" " " No. 255	200
	16.	"	Louisa Nason	800
	"	"	Marcus Staples	300
	19.	"	George C. Boyden	500
	20.	"	Belinda Staples	1,000
	9.	"	Charles Tarr, jr., No. 248	500
	"	"	Benjamin Tarr, No. 247	500
	21.	"	Harriet Small, No. 263	500
	26.	"	Albert H. Gilman, No. 264	1,000
	"	"	James Andrews, No. 265	500
	"	"	James G. Brackett, No. 266	500
	27.	"	J. S. Ricker, No. 267	1,000
	"	"	S. W. Luques, No. 268	300
		28.	" Margaret L. Holbrook, No. 269	300
67	Jan.	19.	To Charles Staples, No. 270	500
		29.	" Thomas Quimby, No. 274	500
	29.	"	William H. Hutchins, No. 275	500
Feb.	4.	"	Nancy Hodsdon, No. 276	500
	"	"	Nancy Hodsdon, No. 277	500
	"	"	A. Olivia Cole, No. 280	100
	"	"	Elizabeth Cole, No. 279	400
Jan.	25.	"	A. Staples, No. 278	200
	27.	"	Moses Parker, No. 273	2,000
			Amount carried to page 13	$193,300
1862.				
Nov.	1.	By	amount brought forward	4,700
April	29.	"	Enoch Morse, 391	500
May	13.	"	estate of E. Morse, 396	500
1864.				
Nov.	1.	"	John N. Goodwin, 401	2,100
Oct.	31.	"	Geo. A. Priest, 453	1,000
	"	"	Ellen M. Kingsbury, 456	1,500
Aug.	28.	"	John N. Goodwin, 457	300
	"	"	Susan M. Goodwin, 457	1,800
Dec.	25.	"	Moses B. Parker	1,000
Jan.	28.	"	John B. Mange, No. 142	300
Feb.	4.	"	Daniel Hodsdon, No. 15	500
			Amount carried to page 13	$14,200

I hereby certify that the above is a true copy of the dates, names, figures, and marks in both ink and pencil, under the head of guarantee capital, as taken from the fifth (5th) page of the book, Ledger A, of the Piscataqua Fire and Marine Insurance Company, of South Berwick, Maine, now in my possession.

JOHN Q. SCAMMAN,
Trustee of the Fire and Marine Insurance Co.

SACO, *January 7*, 1880.

68 STATE OF MAINE,
County of York, ss:

SACO, *Jan'y 7*, 1880.

Then personally appeared John Q. Scamman, trustee, as aforesaid, and made oath to the truth of the foregoing affidavit by him subscribed. Before me,

GEORGE A. EMERY, *Notary Public.*

Copy of certificate No. 222.

STATE OF MAINE:

Guarantee cash capital, $150,000. Shares $100 each.

THE PISCATAQUA FIRE AND MARINE INSURANCE COMPANY.

No. 222.] [Cut.] [225 shares.

This is to certify that William Hill is entitled to two hundred and twenty-five shares of one hundred dollars each in the guaranteed capital stock of the Piscataqua M. Fire and Marine Insurance Company, with interest, payable from the net earnings of the company, at six per cent. per annum, with such additional dividends and profits payable as they shall accrue according to the terms of the charter and by-laws of the company.

This certificate of guarantee scrip shall not be transferable for twelve months from the date hereof, in accordance with an agreement to that effect unto the said , and only then on the books of the company and the surrender of this certificate.

69 In witness whereof this company have caused these presents to be sealed with their common seal and signed by the president and countersigned by their secretary, at South Berwick, Me., this 1st day of August, A. D. 1862.

PISCATAQUA M. FIRE AND MARINE INSURANCE COMPANY, SOUTH BERWICK, MAINE. INCORPORATED 1855.

DAVID FAIRBANKS,
President.

SHIPLEY W. RICKER,
Secretary.

(Printed in red ink across face:) Guaranteed scrip.

(On stub:)
No. 222.

Date, Aug. 1st, 1862.
No. of shares, 225.
In name of William Hill, North Berwick, Me.
Received by
13 shares of this certificate cancelled March 31, 1865.
Notice received of a transfer to Edward E. Hill Dec. 1, 1865.

(Endorsed on back:)

MARCH 31ST, 1865.

Received thirteen hundred dollars for thirteen shares of the within stock.

WILLIAM HILL.

[2. U. S. Interior. 2. 1865, 3 m., 31. W. Hill. 2. U. S. Interior. 2.]

In consideration of a note of the within-mentioned company for the sum of twenty-one thousand and two hundred dollars, dated Feb. 1st, A. D. 1866, authorized by a vote of said company at a meeting of the directors thereof holden Dec. 26, 1862, I hereby transfer to said company the within shares and this certificate thereof.

WILLIAM HILL.

APRIL 1, 1866.

70 [Two. 2. U. S. Interior. 2. P. F. & M. Ins. Co. Feb. 21, '66. 2. U. S. Interior. 2 cents.]

I hereby certify that the above is a true copy of the certificate of stock, with all of the indorsements and stamps thereon, excepting the date of the month and day on the second indorsement alluding to a vote of the company, which date of day and month I am unable to decipher; excepting, also, the date of the month on the revenue stamp attached to said indorsement, which I am not able to decipher; number two hundred and twenty-two (222), issued to William Hill, as taken from the certificate stock book of the Piscataqua Fire and Marine Insurance Company of South Berwick, Maine, now in my possession, and is also a true copy of the memoranda on the margin or stub attached to said certificate, written both in ink and pencil, as designated in the above copy.

JOHN Q. SCAMMAN,
Trustee of the Piscataqua Fire and Marine Ins. Co.

JANUARY 6, 1880.

STATE OF MAINE,
County of York, ss:

SACO, *Jan'y* 7, 1880.

Then personally appeared John Q. Scamman, trustee, as aforesaid, and made oath to the truth of the foregoing affidavit by him subscribed.

Before me.

GEORGE A. EMERY, [L. S.]
Notary Public.

71 *Copy of certificate No. 236.*

STATE OF MAINE.

Guarantee cash capital, $150,000. Shares $100 each.

THE PISCATAQUA M. FIRE AND MARINE INSURANCE COMPANY.

No. 236.] [Cut.] [82 shares.

This is to certify that William Hill is entitled to eighty-two shares of one hundred dollars each in the guaranteed capital stock of the Piscataqua M. Fire and Marine Insurance Company, with interest payable from the net earnings of the company at six per cent. per annum, with such additional dividends and profits payable as they shall accrue according to the terms of the charter and by-laws of the company.

This certificate of guarantee scrip shall not be transferable for twelve months from the date hereof, in accordance with an agreement to that effect unto the said , and only then on the books of the company and the surrender of this certificate.

PISCATAQUA M. FIRE AND MARINE INSURANCE CO., OF SOUTH BERWICK, ME. INCORPORATED 1855.

In witness where of this company have caused these presents to be sealed with their common seal and signed by the president and countersigned by their secretary, at South Berwick, Me., this first day of June, A. D. 1863.

SHIPLEY W. RICKER, *President.*
DAVID FAIRBANKS, *Secretary.*

[United States P. F. & M. Ins. Co. 25. June 1, 1863. 25. Power-of-att'y. Interest revenue.]

(Printed in red ink across face:) Guaranteed scrip.

(On stub:)

No. 236.

Date, June 1st, 1863.

No. of shares, eighty-two (82).

72 In name of William Hill, North Berwick, Me.

Received by

Notice received of a transfer to Edward E. Hill, Dec. 1, 1865.

I hereby certify that the above is a true copy of the certificate of stock number two hundred and thirty-six (236), to William Hill, as taken from the certificate stock-book of the Piscataqua Fire and Marine Insurance Company of South Berwick, Maine, now in my possession, and is also a true copy of the memoranda on the margin or stub attached to said certificate, written both in ink and pencil, as designated in the above copy.

JOHN Q. SCAMMAN,
Trustee of the Piscataqua F. & M. Ins. Co.

JANUARY 6, 1880.

STATE OF MAINE,
County of York, ss:

SACO, *January* 7, 1880.

Then personally appeared John Q. Scamman, trustee as aforesaid, and

made oath to the truth of the foregoing affidavit by him subscribed. Before me.

GEORGE A. EMERY,
Notary Public.

Copy of dividend account.

1863.			
Feb. 27.	Interest. To William Hall on certificate No. 122, to Feb. 1, 1863. Amount 22,500 less int. paid, $382.58, leaving amount drawing interest $22,117.42		884 69
73 1864.			
Feb. 10.	Interest. To paid W. Hill on stock No. 222..		900 00
" "	Interest. To paid W. Hill on stock No. 13..		60 00
" "	Interest scrip on note No. 4		60 00
July 29.	Interest. To paid Wm. Hill, stock No. 222		900 00
Aug. 10.	Interest. To paid Wm. Hill, No. 107		60 00
Dec. 23.	Stock interest. To Wm. Hill, 212, 283, 213, 218, 222, 236		3, 462 00
			85, 442 00
1865.			
Feb. 2.	Stock interest. To Wm. Hill, No. 222		900 00
" 8.	Interest. To paid Wm. Hill, No', 93 and 107		248 48
May 26.	Interest. To paid W. Hill, 101 and 105		182 40
July 27.	Stock interest. To paid William Hill, No. 222		900 00
" 28.	Interest. To paid William Hill, No', 93, 107		248 48
			82, 479 36

I hereby certify that the within interest account is a correct copy taken from the journal and other books of the Piscataqua Fire and Marine Insurance Company, of South Berwick, Maine, now in the possession of the trustees of said company.

JOHN Q. SCAMMAN,
One of the Trustees of the Piscataqua F. & M. Ins. Co.

Subscribed and sworn to this third day of May, A. D. 1869, before me.
GEORGE A. EMERY, *Notary Public.*

74 *Records of annual meetings A. D. 1863 and A. D. 1864, with statement of financial condition.*

The stockholders of the Piscataqua F. and M. Insurance Co. met at the company's rooms, in South Berwick, Maine, on Friday, 27th day of November, 1863, at eleven o'clock in the forenoon, the president, David Fairbanks, in the chair; and called the meeting to order, and a quorum of the stockholders in attendance. The president called the meeting to order by reading the notice calling said meeting, as follows:

PISCATAQUA FIRE AND MARINE INSURANCE CO.

Annual meeting notice.—The stockholders of said co. are hereby notified that their annual meeting for choice of directors and the transaction of such other business as may legally come before them will be held at the company's rooms, in South Berwick, Me., on Friday, the 27th day of November, A. D. 1863, at the hour of eleven o'clock in the forenoon.

Per order of the board.

SHIPLEY W. RICKER, *Sec'y.*

OCTOBER 27, 1863.

Published in the Union and Journal, a new-paper printed and published at Biddeford, in the county of York, October 29 and Nov. 6 and 13, 1863.

Voted to hear the reading of the reports, which were as follows:

Schedule A.

Total of guaranteed stock..... $160,800 00

Schedule B.

Total of premium note, stock..... 94,100 00

75 *Schedule C.—Investments.*

STOCKS.

		Par val.	Mark't Do.
87	shares North Berwick Bank	88,700	89,228
103	" South " "	5,150	5,562
54	" City Bank, Biddeford, Me.....	5,400	5,832
39	" Biddeford Bank, Biddef'd, Me...	3,900	4,212
7	" Casco Bank, Portland, Me.	700	770
1	" Bank of Commerce, Belfast.....	100	104
43	" Great Falls, Somersw'th, N. H..	4,300	4,644
5	" Somersworth Bank.....	500	540
20	" Mechanic and Traders' Bank, Portsmouth.....	1,400	1,800
20	" Cocheco Bank, Dover, N. H.....	2,000	2,160
5	" Dover " " "	500	540
6	" Salmon Falls Bank, N. H.....	600	672
18	" Freeman's Bank, Boston, Mass..	1,800	1,800
13	" Rockport Bank, Rockport, " ..	1,300	1,400
10	" Fall River.....	1,000	1,100
50	" Prov. & Worcester Railroad.....	5,000	7,000
50	" Manchester and Lawrence	3,000	3,450
10	" Boston & Worcester.....	1,000	1,370
19	" Galena & Chicago Union.....	1,900	2,052
5	" Boston & Maine Railroad	500	635
260	" Dover & Winnepisseogee R. R..	2,600	2,600
12	" Sanbegan Man'f'g Co., Milford, N. H.....	6,000	6,120
12	" American Telegraph Co.....	1,200	1,080

10	"	Dover Packet Co	500	510
2	"	Saco & Biddeford Gas-light Co.	200	200
15	"	Brighton Market, Brighton, M.	1,500	1,560
1	"	Atlantic & St. Lawrence R. R.	100	60
			$84,250	$90,405

76

BONDS.

	Par val.	Mark't val.
U. S. coupon sixes, 1881	1,000	1,080
" " " 5-20	16,900	16,900
" " 7 3-10 Treasury notes	3,100	3,280
St. Joseph City, Mo., 10s, '68 and '69	1,500	1,250
Macon Co., Ill., 8s, 1877	1,000	1,000
Mitchell Co., Iowa, 6s, demand	500	500
Atlantic & St. Lawrence R. R., '66	500	440
Biddeford City, Me., 6s, '71 and '81	200	216

MORTGAGES.

1 mortgage on real estate in Me	3,500	3,500
2 " " " " N. H	1,200	1,200
1 " " " " Conn	1,000	1,000
Loaned on call with endorsements	1,800	1,800
Premium stock notes payable on demand	94,100	94,100
	$210,550	$216,571

CASH ITEMS.

Cash in hands of agents and in transitu	2,195 88	2,195 78
Cash in hand and bal. in banks	4,237 33	4,237 33
Bills receivable for M. premiums maturing daily	50,484 01	50,484 01
	$267,467 12	$273,588 12

Schedule D.—Losses, &c.

Fire losses	13,283 25
Total marine losses	39,399 79

PROFIT AND LOSS.

DR.

To officers, directors, &c	1,926 69
" postage and expressage	202 42
" marine losses	39,299 79
77 To printing and stationery	360 24
" commissions	8,541 06
" fire losses	13,283 25
" interest, discount, and exchange	5,377 20

" adjusting losses and expenses		1,645 46
" taxes		1,311 02
" returned premiums		3,146 50
" office rent		90 00
" general agency		494 80
		$75,678 43
Balance		9,826 15
		$85,504 58

CR.

By marine premiums		$69,207 33
" fire do.		16,297 25
		$85,504 58

COMPANY'S STANDING.

DR.

To bills payable		$24,412 00
" interest scrip		2,484 00
" capital stock		45,700 00
" unpaid losses		249 18
" treasurer and secretary's acceptances		2,700 00
		$75,545 18

CR.

By bills receivable		$34,817 37
" collection acc't, D. F.		15,666 64
" do. do. O. D. W.		692 76
" revenue stamps		22 26
" O. D. Wetmore		405 30
" cash in hands of agents		1,097 72
78 To cash on hand		1,561 86
" David Fairbanks		2,653 21
		$56,917 12
Balance		18,628 06
		$75,545 18

Business for the year ending Nov. 1, 1863.

Am't at risk Nov. 1, 1862—Marine	$325,156	
Fire	1,313,151	
		$1,638,307
Am't of marine risks ins'd for the year	$1,781,910	
" fire " "	1,305,944	
Fire and marine		$3,087,854
		$4,726,161

Am't of marine risks terminated for the year...	$1,759,681	
Am't of fire do. do. ...	1,001,124	
		$2,760,805
		$1,965,356
Am't at risk Nov. 1, 1863, viz:		
Fire risks.....	$1,617,971	
Marine do.....	347,385	
		$1,965,356
Am't of marine premiums rec'd during the year	$69,267 33	
Am't of fire do. do.....	16,297 10	
Fire and marine.....		$85,564 43
Am't of marine prem's terminated for the year..	$65,143 29	
Am't of fire do. do.....	12,482 67	
Fire and marine.....		$77,925 96
Marine prem's not terminated.....	$27,355 72	
Fire " " "	20,501 67	
Fire and marine.....		$47,857 39

Voted, That the foregoing reports be accepted.

79 The stockholders of the Piscataqua Fire and Marine Insurance Co. met at said company's rooms in South Berwick, Me., on Friday, the 25th day of November, A. D. 1864, at 11 o'clock in the forenoon.

The president of said company, David Fairbanks, in the chair, and called the meeting to order, and a quorum of the stockholders present. The president called the meeting to order by reading the following notice, calling said meeting:

"PISCATAQUA FIRE AND MARINE INSURANCE CO.

"*Annual meeting notice.*—The stockholders of said company are hereby notified that the annual meeting of the stockholders of said company will be holden at the company's rooms in South Berwick, Me., on Friday, the 25th day of Nov'r next, at 11 o'clock a. m., for the election of a board of directors, and the transaction of other business which may legally come before said meeting.

"Per order of the directors.

"SHIPLEY W. RICKER, *Sec'y.*

"SOUTH BERWICK, *Oct'r* 29, 1864."

Published in the Maine Democrat, a newspaper published in Saco, in the county of York, in the State of Maine, on the 29th day of Oct'r and 1st, 7th, 8th days of Nov'r, 1864.

On motion of Abner Oakes, it was

Voted to hear the reading of the reports, which were as follows:

Report of the president and directors of the Piscataqua Fire and Marine Insurance Co. to the stockholders, made up to the 1st day of Nov'r, 1864.

80 GENTLEMEN: Herewith we have the pleasure of presenting you with the accounts and statements of the business and condition of the company for the past year, viz:

CAPITAL.

The guarantee capital paid in is $201,000, representing 2,010 shares at $100 per share, as more fully appears by Schedule A herewith.

This capital has been increased the past year in the sum of $40,200. The note capital paid in is $72,400, representing 1,440 shares at $5 per share, being a decrease the past year of $21,700, as per Schedule B.

ASSETS.

The investments at par amount to	$175,150 00
Cash items, including marine prem's	65,928 62
Note capital is	72,400 00
Making the total assets	$313,478 62

And leaving a market value of $324,136.62, per Schedule C.

BUSINESS.

The risks written during the year am't to	$4,614,623 00
" premiums thereon were	100,165 83
" risks expired during the year	2,838,643 00
" premiums terminated	75,034 60
" amount of risks now in force	3,741,336 00
" premiums not terminated	78,988 32

PROFIT AND LOSS

Is credited with earning for the year	$100,165 83
And debited with losses	57,414 92
Expenses, interest, returned premiums, &c	32,371 67
Leaving a gain for the year	10,379 24
The company's standing is to the debit in the sum of	8,249 02
Against, at the same time last year	18,628 06
A difference in its favor of	10,379 04

DIVIDENDS.

The earnings on the investments have been returned to the guaranteed stockholders, and six per cent. additional paid upon all stock which was in for the full year, making the dividends for the year fully 13 per cent.

The past year's business has been successful, and the prospect for an

increased amount of business never better. The reputation and standing of the company have been much improved and its agencies largely extended, leading to the belief that, with careful management, the company will return good dividends to its stockholders and afford a safe and reliable medium to the public for the insurance of property.

All of which is respectfully submitted.

November, 1864.

Amount guaranteed stock, Schedule A	$201,000
" premium note do. " B	72,400

Schedule C.—Assets.

		Par val.	Mark't val.
U. S. bonds		33,600	34,272
" " 1881		4,000	4,280
" certificate of indebtedness		15,000	15,000
		$52,600	53,552
82	30 shares Cocheco Bank, Dover, N. H.	3,000	3,150
	5 " Dover " " "	500	525
10	shares Langdon	1,000	1,050
7	" Casco	700	763
15	" 1st National, Portland, Me	1,500	1,575
1	" B'k of Commerce, Belfast	100	103
5	" Somersworth B'k, Somersworth	500	525
43	" Great Falls Bank	4,300	4,515
6	" Salmon Falls, Rollinsford	600	660
200	" No. Berwick, Berwick, Me	20,000	21,000
103	" So. Berwick, So. Berwick	5,150	5,459
117	" City Bank, Biddeford	11,700	12,285
39	" Biddeford do. do.	3,900	4,212
10	" Fall River, Mass	1,000	1,100
2	" Blue Hill Bank, Dorchester	200	210
15	" M. & T. National do., Portsmouth	1,500	1,575
		$55,650	$58,700
	City of Biddeford, Me	$1,500	$1,575
	St. Joseph, Mo	1,500	1,500
	Macon County, Ill	500	540
	Mitchell County, Iowa	1,000	1,000
		$4,500	$4,615
207	shares Dover & Winnepisseogee R. R.	$20,700	$21,942
50	" Prov. & Worcester R. R.	5,000	7,750
30	" Manchester & Lawrence do.	3,000	3,645

50	" Kinsman Street do.....	2,500	3,125
5	" Boston & Maine do.....	500	635
	10 shares Boston & Worcester.....	1,000	1,444
83	1 share Atlantic & St. Lawrence ...	100	80
	15 " Rockport Railroad	1,500	1,575
		$34,300	$40,196
	Atlantic & St. Lawrence 6s, 1866	500	500
	Kinsman Street R. R. bonds 1867	2,000	2,000
	Loans on mortgage of real estate.....	4,700	4,700
	Loaned on collateral, viz: On—		
	15 shares Brighton Market Bank.....	1,500	
	5 " Bank of Cape Ann	500	
	18 " Freeman's Bank	1,800	
	23 " Rockport do	2,300	
	12 " Sanhegan Manf'g Co.....	6,000	
			12,100
	On call with sound endorsements.....	1,300	1,300
	12 shares American Telegraph Co	1,200	1,728
	27 U. S. consols.....	2,700	2,700
	10 shares Dover Packet Co.....	500	550
	15 " Newton & Watertown Gas Light Co.....	1,500	1,400
	2 " Saco and Biddeford Gas Light Co..	200	200
	28 " Richmond Mining Co.....	1,400	1,400
	Cash in hands of agents and in transitu.....	2,454 42	
	Cash on hand and in bank.....	8,100 54	
	Bills receivable for marine prem's maturing daily	55,373 66	65,928 62
	Premium notes in advance.....	72,400 00	72,400 00
	Total.....	313,478 00	324,136 62

84 *Schedule D.—Business.*

Business for the year ending Oct. 31, 1864.

Am't at risk Nov. 1, 1863, Marine.....		$347,385
Fire		1,617,991
Fire and marine.....		$1,965,356
Am't of marine risks insured for the year.....		1,657,955
" fire do. do.		1,180,688
Am't at risk Nov. 1, 1864.....		$3,741,336
Viz: Fire risks.....	$3,200,563	
Marine risks.....	540,773	
		$3,741,336
Am't of marine prem's received for the year	$66,150 03	

Am't of fire prem's received for the year..	34,015 80	
Fire and marine prem's.....	$100,165 83	
Am't of marine prem's terminated for the year.....	$61,800 00	
Am't of fire prem's terminated	13,234 60	
Am't terminated in year.....	$75,034 60	
Marine prem's not terminated..... ...	$31,705 45	
Fire do. do.	41,282 87	
Am't prem's not terminated.....	$72,988 32	

LOSSES.

Total of fire losses	$10,058 69	
" marine losses.....	47,356 23	
		$57,414 92

Voted, That the foregoing reports be accepted.

85 PROFIT AND LOSS.

DR.

Officers, directors, and co.....	$2,028 29
Postage, expressage, &c.....	276 49
Marine losses	47,356 23
Printing, stationery, &c.....	649 42
Commissions.....	9,992 83
Fire losses.....	10,058 69
Interest, discount, &c.....	10,853 38
Adjusting losses.....	813 04
Ret'd prem's, reinsurance, &c.....	4,247 91
Taxes	1,477 17
General agency.....	1,899 56
Office rent, &c.....	133 58
Balance.....	10,379 24
	$100,165 83

CR.

Fire prem's.....	$34,015 80
Marine prem's	66,150 03
	$100,165 83

COMPANY'S STANDING.

DR.

Bills payable.....	$312 00
Interest scrip	1,404 00

Capital stock	67,948 50
Unpaid losses	249 18
Fairbanks, Lewis & Co	4,263 96
	874,177 64

86 CR.

Bills receivable	837 50
Collection account	53,363 73
O. D. Wetmore, collection account	342 15
Revenue stamps	67 38
Cash on hand	8,033 16
Cash due from agents	2,143 26
Suspense acc't	311 16
Due on open policies	1,630 28
Balance	8,249 02
	874,177 64

Voted, that the foregoing reports be accepted.

I hereby certify that the foregoing minutes, annual statements, and reports are correct copies taken from the book marked "Minutes of the Piscataqua F. & M. Insurance Company," purporting to be the records of the Piscataqua Fire and Marine Insurance, now in the possession of the trustees of said company.

JOHN Q. SCAMMAN,
One of Trustees of Pis'a F. & M. Ins. Co.

Sworn to and subscribed before me this third day of May, A. D. 1869.
GEORGE A. EMERY, [L. S.]
Notary Public.

87 *Evidence for respondent.*

Circuit court of the United States, Maine district.

ALBERT BOWKER)
v.) in eq.
WILLIAM HILL AND AL.)

It is admitted that the respondent, William Hill, will testify as follows, and the following is to be taken as his testimony, subject to all legal objections to the competency of the evidence:

That he was treasurer of said corporation as alleged in the bill, but that by authority of the directors the marine business was done in Boston by the president, and the money pertaining to that part of the business was collected and paid out by him without coming into the hands of the treasurer, and by the same authority the fire business was conducted by the secretary at the company's office in South Berwick in the same manner, and the treasurer's books were kept by the secretary; and the respondent, as treasurer, had little to do except to sign official documents, and as he lived some eight miles from the company's office and was engaged in his private business, he had but little actual knowledge of the condition and business

of the company, but acted upon the information given him by the president and secretary; but he made the treasurer's and other financial reports filed in this case and attached to his disclosure, and was present at the annual meetings in 1874 and in 1875.

That on the first day of July, A. D. 1863, upon the request of the directors, the respondent, in accordance with the written contract referred to in his disclosure, assigned to it eighty-two shares of said railroad stock, and eighty-two shares of said company stock were issued to the
88 respondent, with the agreement that said railroad company stock should be returned to him on demand and upon surrender of said insurance company stock, and, as he claims, in accordance with that agreement, said re-exchange was made about the fifth day of May, A. D. 1866; but he would admit that meanwhile said stocks stood in his name upon the books of the company just as though it was his absolute stock, and would admit the truth of what he has said in his disclosure.

That on the first day of August, A. D. 1862, said company did issue to him two hundred and twelve shares in the capital stock of said company, for which he paid by transfer of certain securities; that the same stood in his name just as though it was his absolute stock; that the directors passed the vote of December 26, 1862, annexed to his disclosure, and he sold to said company said two hundred and twelve shares of stock, and received in payment therefor the company note for twenty-one thousand two hundred dollars, claiming to act according to said vote, which note has been paid out of the proceeds of assets assigned to him, as stated in the answer.

That the respondent held against the said company, when said assets were assigned to him, the following claims:

Note dated July 6, 1861,	for		$2,100
" Aug. 6, 1861,	"		2,000
" Dec. 1, 1866,	"		*3,269
" Feb'y 1, 1866,	"		†21,200
" Feb'y 8, 1866,	"		20,000
" April 17, 1866,	"		15,000
" May 1, 1866,	"		11,272
" May 1, 1866,	"		10,000
Total			$84,841

89 It is agreed that the judgment referred to in the answer against William Hill, the respondent, was assigned to Wm. Hobbs on the ninth day of August, A. D. 1851, for the sum of twenty-five hundred dollars; that on the first day of September, A. D. 1872, said judgment amounted to thirty-six hundred and eighty-six dollars and ninety-four cents, and was then discharged by the assignee, who signed the following receipt:

"NORTH BERWICK, ME., *Sept.* 1, 1872.

"Received of William Hill thirty-six hundred and eighty-six dollars and ninety-four cents, in full discharge of this judgment.

"WM. HOBBS, *Assignee.*"

*Given for dividends. †Given for 212 shares of stock.

But that the complainant can show, if the fact is relevant, that said Hobbs actually received only what he paid for said judgment and interest.

JOSIAH H. DRUMMOND,
For Respondent.

W. L. PUTNAM,
For Complainant.

Said cause is again continued to April term, A. D. eighteen hundred and eighty, when the same came on for hearing before Clifford and Fox, justices, and it was ordered and adjudged that a decree be entered for the complainant, and that said cause be referred to a master to determine the amount of the judgment, unless the amount is agreed upon by the parties.

Said cause is again continued to September term, A. D. eighteen hundred and eighty, when the following is filed:

Statement in place of master's report.

90 The following statement is exhibited to the court in place of master's report, upon the question of the amount to be recovered:

MAY, 1866.

Hill received 82 shares Dover and Winnepisseogee stock for 82 shares of Piscataqua Ins. Co. stock, surrendered as shown by the case, and the stock so received was worth $8,200.00.

The Dover and Winnepisseogee R. R. Co. stock paid six (6) per cent. dividend per annum, and Hill received these dividends after the stock was transferred to him.

Complainant's claim, May, 1866, was $5,000. Judgment was rendered in his favor April 4, 1868, for $5,016.44 debt, and $82.77 costs, the total of debt and costs being less than the original debt of $5,000 and interest from May, 1866. If dividends or interest on the Dover and Winnepisseogee R. R. Co. stock are chargeable to Hill as offset to interest on complainant's claim, or otherwise, and Hill is to be allowed only $2,500 for the McKay et al. judgment, the $8,200 fund, consisting of the 82 shares of Dover and Winnepisseogee R. R. Co. stock, would be sufficient to cover the $2,500 and interest, and complainant's whole judgment and interest; and if respondent Hill is so chargeable with dividends or interest and allowed the full amount of the McKay et al. judgment, there would
91 still remain in his hands from the fund more than complainant's judgment and interest. Respondent, however, claims that if the $21,200 note is sustained as valid, he has a right to offset the $8,200, if he is liable therefor upon his claims against the company.

As to the 212 shares surrendered, for which Hill received the note of $21,200, the answer fails to show the details of the collections from collaterals, the times when collected, and the dividends or interest received thereon.

It appears, p. 57, the amount of collaterals remaining on hand June 6, 1866, was	$59,739 00
It appears, p. 61, that the amount then collected (aside from dividends or interest) was	34,336 00
Totals, collaterals aside from dividends or interest	94,075 00

It appears, p. 19, that all Hill had remaining at time of answer in this case was..... 20, 750 00

Total collaterals collected aside from dividends or interest... 73, 325 00

It is not denied that these collaterals were all interest-paying after June 6, A. D. 1866. The whole amount of notes Hill held, May, 1866, including the $21,200 note for stock surrendered and the $3,269 note for dividends, was $84,841. Of the collaterals, it proved that $73,325 were good, and that these and dividends, and interest upon them after June 6, A. D. 1866, were collected by Hill. Therefore, if Hill is to be charged with interest or dividends on these collaterals, he has collected the $3,269 note, and $9,798 upon the $21,200 note, and interest upon each of these sums from June 6, 1866; and the $9,798, with interest, would more than cover the
92 whole McKay et al. judment, and complainant's judgement each with interest.

If Hill cannot be lawfully allowed, as against complainant, the $3,269 note, he would then have received upon the $21,200 note $9,798 + $3,269 = $13,067, which without interest exceeds the amount of the McKay et al. judgment with interest to day of payment by Hill, and the complainant's judgment with interest to date hereof.

W. L. PUTNAM,
For Complainant.
JOSIAH H. DRUMMOND,
For Respondent.

And on the fourth day of October, A. D. eighteen hundred and eighty, is filed and entered the following:

Final decree.

ALBERT BOWKER)
v.
WILLIAM HILL.)

United States circuit court, Maine district—September term, A. D. 1880.

93 This cause came on to be heard at this term and was argued by counsel; and, thereupon, it was ordered, adjudged, and decreed as follows:

That said Albert Bowker recover from said William Hill the amount of the judgment rendered in favor of said Bowker against the Piscataqua Fire and Marine Insurance Company, at the January term, A. D. 1868, of the supreme judicial court for the county of York, with interest thereon from the fourth day of April, in the year of our Lord eighteen hundred sixty-eight, being the day of rendition of said judgment, which judgment is five thousand ninety-nine dollars twenty-one cents ($5,099.21), and which interest is thirty-eight hundred twenty-four $\frac{40}{100}$ dollars, the amount of the two being eighty-nine hundred twenty-three $\frac{61}{100}$ dollars; and that said Bowker recover from said Hill the costs of this suit, taxed at
94 three hundred twenty-eight dollars and ninety-seven cents, each with interest from the date of this decree; that said Hill pay to said Bowker said sum of eighty-nine hundred twenty-three $\frac{61}{100}$ ($8,923.61)

dollars, and said sum of three hundred twenty-eight dollars and ninety-seven cents for costs of suit, each with interest from the date of this decree; and that execution for said two last-named sums, with interest from date of this decree, issue in favor of said Bowker against said Hill and his estate.

Dated October fourth in the year of our Lord eighteen hundred and eighty.

EDWARD FOX.

WILLIAM L. PUTNAM, *Solicitor.*

Seen. JOSIAH H. DRUMMOND,
Respondent's Solicitor.

And on the sixth day of October, A. D. eighteen hundred and eighty, is filed the following:

Appeal.

95 Circuit court of the United States, Maine district.

ALBERT BOWKER
v. } In equity.
WILLIAM HILL ET ALS.

And now comes William Hill, the defendant in said cause, against whom a decree has been rendered, and claims an appeal to the Supreme Court of the United States from the final decree in the above cause against him, and prays that this his appeal may be allowed, and that a transcript of the record and proceedings in said cause, duly authenticated, may be sent to the said Supreme Court, and that a citation issue to said Albert Bowker. And said appellant, having filed herewith the bond required by law, prays that all further proceedings against him be superseded pending said appeal.

By JOSIAH H. DRUMMOND,
His Solicitor.

And on the sixteenth day of April, A. D. eighteen hundred and eighty-one, is filed the following:

96 *Bond.*

Know all men by these presents that we, William Hill, George H. Snow, William Weymouth, and C. E. Snow, all of North Berwick, in the county of York, and State of Maine, holden and stand firmly bound and obliged unto Albert Bowker, of Boston, in the commonwealth of Massachusetts, in the sum of fifteen thousand dollars, to be paid to the said Albert Bowker, his executors, administrators, or assigns, to the which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the thirteenth day of November, in the year of our Lord one thousand eight hundred and eighty.

The condition of the above obligation is such that, whereas at a term of the circuit court of the United States for the first circuit, holden

97 at Portland, in and for the district of Maine, on the twenty-third day of September, A. D. 1880, a final decree was rendered and entered in a suit in equity depending therein, wherein said Albert Bowker was complainant and said William Hill and Cornelius Sweetsir and John Q. Scamman—said Sweetsir and Scamman as trustees of the Piscataqua Fire and Marine Insurance Company—were respondents, and the said Hill has taken an appeal to the Supreme Court of the United States to reverse the final decree so rendered:

Now, therefore, if such appellant prosecutes his said appeal to effect and answers all damages and costs if he fails to make his plea good, then this obligation to be void; otherwise to remain in full force and effect.

98 WILLIAM HILL. [L. S.]
GEORGE H. SNOW. [L. S.]
WILLIAM WEYMOUTH. [L. S.]
C. E. SNOW. [L. S.]

Signed, sealed, and delivered in presence of—
W. B. TOBEY.

[L. S.] CHARLES W. GREENLEAF,
Notary Public.

This 18th March, 1881.

MAINE DISTRICT:

Foregoing bond is approved as of Nov. 13, 1880.

EDWARD FOX,
District Judge.

UNITED STATES OF AMERICA,
Maine District, ss:

I, A. H. Davis, clerk of the circuit court of the United States for Maine district, do hereby certify that the foregoing printed and written pages are a true transcript of the record and proceedings in the case therein named.

Witness my hand and the seal of said circuit court this ninth day of May, A. D. eighteen hundred and eighty-one.

[SEAL.] A. H. DAVIS, *Clerk.*

99 By the honorable Edward Fox, judge of the district court of the United States for the district of Maine.

To Albert Bowker, of Boston, in the commonwealth of Massachusetts, a citizen of Massachusetts:

Whereas William Hill, of North Berwick, in the county of York, in the State of Maine, and a citizen of said State of Maine, has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the district of Maine made in favor of you, the said Albert Bowker, and has filed the security required by law, you are, therefore, hereby cited to appear before the said Supreme Court at the city of Washington, at the term commencing on the

second Monday of October, to wit, on the third Monday of said term, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Portland, in the district of Maine, in the first circuit, the 6th day of October, in the year of our Lord one thousand eight hundred and eighty.

EDWARD FOX.

100 I accept service of this citation.

WILLIAM L. PUTNAM,
Att'y for Albert Bowker.

(Indorsed:) 58. Citation.

MAINE DIST., *ss:*

OFFICE CLERK C. C. U. S.

Filed Oct. 6, 1880.
Attest: A. H. DAVIS, *Clerk.*

101 Circuit court of the United States, Maine district. In equity. April term, 1879.

ALBERT BOWKER }
v. } No. 58.
WILLIAM HILL. }

Opinion of the court.

Bill in equity alleging that the Piscataqua Fire and Marine Insurance Company was duly incorporated by certain statutes of Maine, originally as a mutual company, afterwards that a provision was made for a guarantee capital; that in 1865 the plaintiff insured his steamer Russia with the company in the sum of $5,000, and that the vessel was totally lost, of which due notice and proof was given to the company; that the loss has not been paid; that in 1866 the plaintiff brought an action against the company, and April 4, 1868, recovered judgment for $5,016.44 debt and $82.77 costs; that execution issued thereon April 8, 1868, and was
102 placed in the hands of a deputy sheriff, who, on the 8th of July, 1868, returned the same wholly unsatisfied, and no part thereof has been paid. That by an act of the legislature of Maine, approved February 28, 1867, the charter of the company was surrendered, and trustees were afterwards appointed by the supreme judicial court to wind up the affairs of the company, but that the trustees had no funds with which to pay the plaintiff's judgment.

The bill charged that the company, before its dissolution, made an unlawful distribution of its property to the defendant Hill, who was a stockholder and treasurer of said company, and paid him dividends on his stock when the company, to his knowledge, was insolvent; that in 1866, the company being insolvent to the knowledge of the defendant, he surrendered and cancelled a large number of shares held by him, and received instead thereof property of the company specifically described in the bill; that in the same year the company transferred to the defendant choses in action and assets belonging to them (specifically described) to the value of about $94,000, as security for a debt of $59,000, and that he has received

from said assets more than enough to pay his debt. The prayer was for satisfaction of the plaintiff's judgment from the property so divided, transferred, and delivered to said Hill, or from the proceeds thereof, and for general relief. The trustees of the company were made parties to the bill.

The trustees answered, admitting their appointment, and that
103 there were no assets in their hands with which to satisfy the plaintiff's judgment, and as to the other matters averred their ignorance.

The defendant Hill demurred.

J. H. Drummond, in support of the demurrer:

1. The plaintiff can maintain no suit because the corporation is dissolved. (Merrill v. Suffolk Bank, 31 Maine, 57; Rankin v. Sherwood, 33 Maine, 509; Thornton v. Railway Co., 123 Mass., 32.)

The act of 1867, accepting the surrender of the charter, permits pending actions to proceed to judgment, but this is only for the purpose of ascertaining the amounts due. When ascertained, it is to be paid pro rata with all other debts.

If the suit is brought on general ground of equity, it must be in behalf of all creditors, or, in other words, to recover assets; and such a suit must be by the trustees.

2. The court has no jurisdiction.

a. Rev. statutes (Maine), ch. 46, § 34, gives a special remedy in the supreme court of Maine.

b. The trustees are necessary parties and are officers of the supreme court of Maine.

3. The plaintiff's right is barred by laches and by the statute of limitations.

W. L. Putnam and E. B. Smith, for the plaintiff:

104 1. The statute under which this company was wound up, expressly reserves all rights to creditors against officers and stockholders, and the supreme judicial court has decided that the trustees cannot pursue those remedies. (Piscataquis Ins. Co. v. Hill, 60 Maine, 178.)

This court, in McKay v. Hill, Sept. term, 1870, decided that the action at law given in certain cases by revised statutes, C. 46, is substantially the same as that given by statute 1848, C. 64, and might be maintained against this defendant, and that his acts were fraudulent and brought him within the scope of that part of the statute. These two decisions cover substantially all this case, except the alleged bar by lapse of time. The trustees not objecting, we may recover even such assets as might otherwise go to them.

2. Our suit was brought within six years after the execution was returned unsatisfied, though more than six years after judgment. This saves us. (Howe v. Whitney, 66 Maine, 17; Story Eq. § 1216*b*; Marsh v. Burroughs, 1 Woods, 463.)

3. We are not bound to bring one bill for all creditors; and if we are, the court will not, on demurrer, assume that there are any such.) Marsh v. Burroughs, 1 Woods, 463; Ogilvie v. Insurance Co., 22 How., 380; Silloway v. Insurance Co., 8 Gray, 199; Lyman v. Bonney, 101 Mass., 562; Yeaton v. Lenox, 8 Pet., 123; Mumma v. Potomac Co., id., 281; Public Works v. Columbia Coll., 17 Wall., 521; Bacon v. Robertson, 18 How., 480; Gordon v. Lowell, 21 Maine, 251; Bigelow v. Cong. Soc., 11 Vt., 283; Myers v. Amey, 21 Md., 304; Powell v. Howell, 63

105 N. C., 283; Swifts v. Arents, 4 Cal., 390; Barnawell v. Threadgill, 5 Ired. Eq., 86; Abbey v. Com. Bk., 31 Miss., 437; Greer v. Wright, 6 Gratt., 154; Woodward v. Solomon, 7 Ga., 246; Hightower v. Thornton, 8 id., 492; Wiggin v. Heywood, 118 Mass., 516; Pendleton v. Perkins, 49 Mo., 565; Trego v. Skinner, 42 Md., 426; Chase v. Searles, 45 N. H., 513.)

LOWELL, *J.*:

This bill is founded on the general equity of creditors to reach and apply dividends made to stockholders when the corporation is insolvent, on the equity to reach corporate assets fraudulently concealed, and on the revised statutes of Maine, C. 46, § 34, giving a judgment creditor a bill in equity in the supreme judicial court to reach dividends improperly paid.

In so far as the allegations are that the defendant, Hill, is indebted to the corporation itself, I am much inclined to think the objection is well taken that the trustees are the only persons who can bring him to an account. It has been held by many respectable courts that if the trustees or assignees of a bankrupt will not interpose, the creditors themselves may file a bill. But this notion has been entirely exploded in England, and at the last session of the supreme court the English law was followed. It is undoubtedly a sound proposition, that the assignees have the sole right to prosecute demands against third persons; and if they will not do so, the remedy is either to have them removed or to obtain leave to file a bill in their name. (Glenny v. Langdon, 98 U. S., 20; Rochfort v. Bat-
106 tersby, 2 H. of L., 388; Beck v. Parker, 65 Penn. St., 262; Cook v. Rogers, 31 Mich., 391; Tanqueray v. Bolles, (L. R.) 14 Eq. 151; Collins v. Burton, 4 DeG., & J., 612.)

The creditors may sometimes bring a bill against the assignees and others, to compel the assignees to get in assets due from the other defendants. (Davis v. Newton, 6 Met., 537.)

But when it comes to special remedies against third persons, such as the officers and stockholders of a company, the assignees can only pursue those claims which are of a general nature, that is, which accrue to all the creditors, as, for example, general assessments on the shares, or at least such as accrue to a distinct class of creditors; and, therefore, if the recovery depends on the equities of particular creditors, or upon the date when their debts were contracted, etc., those creditors must necessarily enforce their own special rights. (See Wall v. Balcom, 9 Gray, 92; Ex-parte Sheen, 6 Ch. D., 235; Bristol v. Sanford, 12 Blatch., 341; Dutcher v. Marine National Bank, id. 435.)

In the case of this corporation, the act of 1867, accepting the surrender of the charter, was not as broad as many bankrupt laws are, and it expressly reserved and excepted special remedies against officers and stockholders, and the supreme judicial court dismissed a bill brought by the trustees against this defendant to recover some of the quasi assets for which this suit is instituted, on the very ground that the rights of creditors against stockholders and officers were untouched by the surrender, and must
107 be prosecuted by the creditors themselves. (Piscataqua F. & M. Co., Hill, 60 Maine, 178.) Enough in value of special assets of this character are shown by the bill to save it from being demurrable on this ground. That the defendant's remedies at law are inadequate is shown by the allegations of bill and by Bowker v. Hill, 60 Maine, 172.

I have no doubt that this court has jurisdiction of a bill under revised statutes (Maine), C. 46, § 34, when the allegation of the citizenship of the parties is sufficient. That statute gives a remedy by bill and very properly fixes the tribunal, but it does not intend to say that the United States, or a citizen of another State, may not sue in the circuit court.

The question whether the bill was filed too late, depends upon whether the cause of action accrued before the return of nulla bona This is the question, because the suggestion of laches which might, in equity, shorten the time of limitation, is met by the proof which is contained in the reports of the State court, that the plaintiff and the trustees for him and others, tried to attain the result by a different mode of proceeding. (Bowker v. Hill, 60 Maine, 172; Piscataquis Ins. Co. v. Hill, id., 178.)

The statute of limitations of the State, though not binding proprio rigore upon this court sitting in equity, that is, though not positively adopted by any statute of the United States, as it has been adopted in respect to actions at law, is yet equally binding upon the conscience
108 of the court in ordinary suits between party and party. (Bank of U. S. v. Daniel, 12 Pet., 32; Knox v. Gye, L. R. 5, H. of L., 656.)

I find that the plaintiff had the right to issue execution and try to levy it before bringing this suit, and therefore his bill is seasonable. The distinction between those cases in which an execution must be sued out simply, and those in which it must be both sued out and returned unsatisfied before bill is filed, may be somewhat nice in some jurisdictions. I understand the general rule in Maine to be, that the execution must be returned unsatisfied before a bill will lie. (Webster v. Clarke, 25 Maine, 313; Webster v. Withey, id., 326; Griffin v. Nitcher, 57 Maine, 270; Howe v. Whitney, 66 Maine, 17.) And more especially, I find that this statute is to be so construed. The original act. stat. 1848, C. 64, § 2, expressly required the bill to contain an allegation that the judgment remained unsatisfied by reason of the plaintiff's inability to find corporate property wherewith to satisfy the same. The revised statutes are much more condensed in phraseology, but there is no reason to suppose that the law was intended to be changed, and, as the remedy is given only to judgment creditors, I apprehend the section to mean that the judgments must remain unsatisfied, notwithstanding an attempt to reach corporate property. It is true that the corporate property was in the possession and charge of the trustees, and that the form of trying to levy an execution became a mere form, but, considering the strictness with which statutory forms are often required to be followed, I am by no means sure
109 that if this form had been neglected the defendant might not have objected, with effect, that the plaintiff had not brought himself within the category of the statute.

In the case of McKay v. Hill, decided in this court by Shepley and Fox, JJ., in September term, 1870, I find by a copy of the able and careful opinion of Judge Fox, that the court passed upon some of the principal points of this case, and held this defendant liable to thethen plaintiff, under another section of the same statute, giving an action at law to judgment creditors in certain cases. There all the forms of the statute appear to have been followed, and the court sustained the action, deciding, among other things, that this chapter of the revised statutes was a re-enactment and not intended as an alteration to the act of 1848.

It does not appear by the bill that there are any other judgment creditors of the corporation, and on demurrer the court is not bound to take that fact for granted, and therefore it is not necessary now to decide whether the decree must be for the benefit of all. (See Ogilvie v. Knox, 22 How., 380; Marsh v. Burroughs, 1 Woods, 463; Hendricks v. Robinson, 2 Johns., Ch. 283, and other cases cited by the plaintiff.)

My order, therefore, must be—

Demurrer overruled.

(Indorsement on cover:) No. 251. Joseph D. Taylor and Mary R. Hobbs, executors of William Hill, deceased, appellants, vs. Albert Bowker. Maine C. C. U. S. Filed 14th May, 1881.

111-210

Supreme Court of the United States.

JOSEPH D. TAYLOR, AND AL,
EXECUTORS OF WILLIAM HILL,
APPELLANTS,
vs.
ALBERT BOWKER.
} No. 251.

I, Josiah H. Drummond, of Portland, in the State of Maine, Counsellor-at-Law, on oath, say:

That I was solicitor for said William Hill, in said case, in the Circuit Court for the Maine District.

That the final decree was entered in said case in said Circuit Court on the fourth day of October, A. D. 1880, and that I then stated to Hon. Wm. L. Putnam, who alone was present as counsel for said Bowker, that an appeal would be taken to this court, and he urged me to take it at once in order that it might be reached in this court at an early a day as possible, and, thereupon, upon the sixth day of said October I entered the appeal, and requested the clerk of said Circuit Court to furnish the necessary papers for the appeal, which he agreed to do as soon as he could make up the record and make the necessary copies.

That on the twenty-sixth of March, A. D. 1881, I wrote the clerk of this court requesting him to enter and docket the appeal, and received from him the letter hereunto annexed, marked Exhibit A.

That in the meantime I called upon the clerk of the Circuit Court for the transcript of the record.

That said clerk did not complete said transcript until the ninth day of May, 1881, and that I immediately transmitted the papers to the clerk of this court.

That I am informed and believe that this court adjourned on the tenth day of May, 1881, the same day that the transcript was delivered to me in Portland aforesaid.

JOSIAH H. DRUMMOND.

Sworn to before the clerk March 11, 1884.

Exhibit A.

SUPREME COURT OF THE UNITED STATES,
WASHINGTON, *April* 20, 1881.

JOSIAH H. DRUMMOND, Esq.,
93 *Exchange Street, Portland, Me.:*

DEAR SIR: Yours of the 26th ultimo duly received.

I enclose blank stip'n for costs, as you requested. It must be executed for all costs that may accrue without naming any amount.

I cannot docket case until transcript is received, security for costs given, and an appearance of counsel entered for app't. Yours, &c.,

JAMES H. McKENNEY,
Per H. C. McK.

111-110

Supreme Court of the United States.

OCTOBER TERM, - - 1883.

JOSEPH D. TAYLOR AND AL,
EXECUTORS OF WILLIAM HILL, APPELLANTS, } No. 251.

vs.

ALBERT BOWKER.

BRIEF FOR APPELLANTS, BY JOSIAH H. DRUMMOND.

This was a Bill in Equity by Bowker against William Hill, deceased.

In the Circuit Court for the Maine District, a decree was rendered for Bowker, and Hill appealed to this Court. Pending the case in this Court, Hill died, and his executors prosecute the appeal.

The ground upon which the appellants claim a reversal is, that when the Bill was filed the claim was barred by the Statute of Limitations.

The Bill was filed (case, page 1) April 11, 1874. We maintain that the cause of action, if there was any, accrued at the date of the rendition of their judgment, more than six years before the filing of the Bill.

The answer of our opponents is, that execution issued on that judgment, April 8, 1863, and was returned in no part satisfied, July 8, 1868; and that their claim occurred on the date last mentioned, and therefore that their Bill was filed within less than six years after their claim accrued.

The issue is a narrow one, and can be briefly stated: if their claim accrued at the date of the rendition of their judgment, the six years' bar had attached when this suit was commenced; if the claim accrued on the date of the return of the Execution, the six years' bar had not attached when this suit was commenced.

The defence of the statute is set up in the answer (p. 10).

The alleged cause of complaint against Hill grew out of the affairs of the Piscataqua Fire and Marine Insurance Company, a corporation created by a law of Maine approved March 17, A. D. 1855. That company surrendered its charter, and the surrender was accepted by an Act of the Legislature approved February 28, 1867 (case, pp. 18 and 19).

For convenience, we copy that Act:

"AN ACT TO ACCEPT THE SURRENDER OF THE CHARTER OF THE PISCATAQUA FIRE AND MARINE INSURANCE CO.

"*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:*

"SECTION 1. The surrender of the charter of the Piscataqua Fire and Marine Insurance Company is hereby accepted; and its affairs shall be wound up in the manner provided in sections nineteen and twenty of Chapter forty-six of the Revised Statutes, and the organization of the company shall continue for the purposes provided for in said sections; *provided* that so much of said Acts, or the Act incorporating said company, or Act amending the same, as confer any special remedies against officers or stockholders of said corporation, shall not be affected hereby; nor shall this Act relieve them from any personal liabilities under any of said Acts, or under any of the statutes of this State, or prevent any creditor from pursuing any remedies

conferred by Chapter one hundred and thirteen of the Revised Statutes.

"SEC. 2. Actions pending against said company when trustees are appointed as provided in said sectins, may be discontinued without payment of costs; or continued, tried, and judgment rendered, as in other cases; actions may be also maintained upon claims disallowed in whole or in part by the trustees; all judgments shall be satisfied in the same manner as other claims against the company, are satisfied by the trustees.

"SEC. 3. This act shall take effect when approved by the Governor."

Sections nineteen and twenty, of Chapter 46, of the Revised Statutes of Maine, (as then existing) are as follows:

"SEC. 19. When the charter of a corporation expires, or is terminated, a creditor or stockholder may apply to the Supreme Judicial Court, which may appoint one or more trustees to to take charge of its estate and effects, with power to collect its debts, and to prosecute and defend suits at law. The court has jurisdiction in equity of all proceedings therein, and may make such orders and decrees, and issue such injunctions as are necessary.

"SEC. 20. The debts of the corporation are to be paid in full by such trustees, when the funds are sufficient; when not, ratably to those creditors, who prove their debts, as the law provides, or as the court directs. Any balance remaining is to be distributed among the stockholders, or their legal representatives, in proportion to their interests."

The Act of 1867 ordered that the affairs of this Company should be wound up in the manner provided in said sections nineteen and twenty, and by necessary implication forbade proceedings in any other method than those therein provided for. The Act vested in the Trustees all powers except those excepted from its operation.

The exceptions are confined to special statute remedies. All other remedies are vested in the Trustees.

This fact Bowker's solicitor fully recognized when he drew the Bill of Complaint in this case. He avers that the corpora-

tion has "long since ceased to have any corporate existence for any purpose whatever" (p. 1), and we claim that the Act accepting the surrender of the charter of the corporation expressly reserved the rights to pursue remedies against the officers or stockholders arising *under any* STATUTES *of the State*. In other words, the *Statute* remedies alone are reserved to creditors: all others are vested in the Trustees.

In Sections thirty-four and thirty-five of Chapter 46 of the Revised Statutes, we find the following:

"SEC. 34. When such a corporation has unlawfully made a division of any of its property, or has property which cannot be attached, or is not by law attachable, any judgment creditor may file a bill in equity in the Supreme Judicial Court, setting forth the facts, and the names of such persons as are alleged to have possession of any such property, or choses in action, either before or after division. Service is to be made on the persons so named as in other suits in equity. They are, in answer thereto, to disclose on oath all facts within their knowledge, relating to such property in their hands, or received by a division among stockholders. When any one of them has the custody of the records of the corporation, he is to produce them, and make extracts therefrom and annex to his answer, as the court directs.

"SEC. 35. The court is to determine, with or without a jury, whether the allegations in the bill are sustained, and it may decree that any such property shall be paid to such creditor in satisfaction of his judgment, and cause such decree to be enforced as in other chancery cases. Any question arising may, at the election of either party, be submitted to the decision of a jury under the direction of the court."

On page 19 of case, these are printed in close proximity to Sections nineteen and twenty, but they do not so follow in the Revised Statutes.

These sections give a judgment creditor a remedy against a stockholder who has received property of a corporation through "a division of its property" "unlawfully made," or property of the corporation which cannot be attached or is not attachable.

The remedy is by a Bill in Equity. That remedy has been invoked in this case. By the Act of 1867, the only remedy reserved is one given by statute. The allegations of this Bill follow the provisions of this statute, and are evidently made to enforce it.

This being a statute remedy, it must be strictly pursued.

I. This remedy is given to a "judgment creditor." When does a man become a judgment creditor? Is it not as soon as his judgment is entered up? In many States, a "judgment creditor" acquires a lien on his debtor's real estate. When does that lien attach? Is it not at the moment of the entry of the judgment? This remedy is given to "judgment creditors": any "judgment creditor" may file his Bill in Equity. But it is said that, in pursuing his remedy, he must first sue out his execution and have that returned "*nulla bona*." But in this case, the statute does not so provide: and yet in all the other places in the same chapter (46), in which remedies against stockholders are provided, the statute expressly requires the return of an execution, *nulla bona*, before the creditor can have his remedy. See Secs. 24, 25, 26.

Now, if in one section of a chapter a remedy is given to a judgment creditor whose execution has been returned *nulla bona*, and in another section of the same chapter another remedy is given to a judgment creditor whose execution has been returned *nulla bona*, and in a third section a remedy is given to "*any* judgment creditor," is there any ground for holding that in the third case the execution must be returned *nulla bona*, before he can prosecute his remedy? Does not the enumeration in the *two* cases make the omission in the *third* case conclusive as to the intention?

Another thing: if the judgment creditor's cause of action does not accrue until the return of an execution *nulla bona*, it is within the power of the judgment creditor to postpone the

accruing of his cause of action at his pleasure: he can have his execution at any time within a year from the judgment, and may have it renewed at intervals of three years, upon satisfying the Court that it has never been in the hands of an officer: and the result would be that he might have a cause of action accrue years after the rendition of the judgment, and subject the stockholder to a suit at any time within six years after that.

But in the other section in which a right is given to a creditor to commence an action against a stockholder, he must commence it "*within six months* after the date of the rendition of judgment against the corporation." Sec. 26, ch. 46.

In Section thirty-four, no limitation is made, but the matter is left to the general law. Who can doubt that the intention was that the action under Section thirty-four should be limited to within six years from "the date of the rendition of the judgment against the corporation"?

But it is said that Section thirty-four is substantially the same as Chapter 64 of the laws of 1848, and that in that Statute, the creditor must allege that the judgment is unsatisfied by reason of inability to find corporate property to satisfy the same. The revision is so much different that it cannot properly be said that it means the same as the old statute.

Taken in connection with the other sections in the same chapter, it is manifest that it was the intention of the Legislature to change the provision. A substantial provision of a statute omitted in a revision, cannot be supplied by inaplication.

In the cases cited by Judge Lowell, in his opinion below, this point was not made. It did not arise.

II. But we maintain that if ordinarily an execution must be issued and returned *nulla bona*, its issue in this case was unauthorized by law and was forbidden by the statute, as well as being absolutely void.

Referring to the date of the Act accepting the surrender of this charter, (February 28, 1867,) and the allegation as to the date when Bowker's action against the corporation was commenced (June 5, 1866) and when terminated (April 4, 1868), we find that the action was pending when that Act took effect.

Without a saving clause, upon a dissolution of a corporation no judgment can thereafter be legally rendered against it.

Merrill v. Suffolk Bank, 31 Maine, 57.
Rankin v. Sherwood, 33 Maine, 509.
Thornton v. Railway Co., 123 Mass., 32.

1. This statute allowed pending actions to proceed to judgment. That was the limit. They could proceed to judgment for a single specified purpose. The moment judgment is entered up, the saving clause is exhausted. The execution in this case issued against a *dead corporation*, and was therefore absolutely void.

2. The Trustees were appointed at the Court holden on the first Tuesday of January, A. D. 1868, and judgment in the case was entered at the succeeding April Term. The case, therefore, was pending when they were appointed. The plaintiff had his election to discontinue his suit or prosecute it to judgment. The second section (p. 19) so provides. But if he prosecuted it, it could be only till *he obtained judgment:* no provision for issuing an execution is made: but, on the contrary, the Act specially provides that "*all judgments shall be satisfied in the same manner as other claims against the Company are satisfied by the Trustees.*" Referring now to the first section of the statute of the provisions therein referred to, we find that the *Trustees* must pay claims in full when there are assets enough, and *ratably* when there are not assets enough to pay in full. This provision, therefore, prohibits the issue of an execution in such a case. The judgment can be satisfied only by

the Trustees, in full if there are sufficient assets; and ratably when there are not.

This provision in relation to satisfying judgments, was not new, nor its effect not understood. It was taken from a statute which had been in force not only since Maine had been a State, but long before in the parent Commonwealth.

Section seventeen, of Chapter 66, of the Revised Statutes of 1857, in relation to "Insolvent Estates," is as follows:

"SEC. 17. Actions pending on claims not preferred, when a representation of insolvency is made, may be discontinued without costs, or continued, tried, and judgment rendered, with the effect, and satisfied in the manner provided in cases of appeal."

By Section sixteen, it is provided that no execution shall issue against the estate on a judgment "in a case of appeal," but it is to be entered on the dividend sheet, to be satisfied as other claims are.

The language of the Act of 1867 follows so closely this which we have just quoted, that there cannot be the shadow of a doubt that the Legislature intended to apply to the Insurance Company the provisions of the law relating to Insolvent Estates.

But while his judgment, so far as the assets of the defunct corporation are concerned, must be satisfied by the Trustees as other claims, yet being a judgment creditor, he is at once entitled to proceed by Bill in Equity under the thirty-fourth Section.

As his cause of action accrued at the date of the rendition of the judgment, this Bill was not filed within six years from that time, and hence his claim was barred

These views in relation to the issue of execution are sustained by the Supreme Court of Maine, in *Bowker v. Hill*, 60 Maine. 172.

"In short," say the court, "all claims, whether in judgment or not, are to be paid ratably. The Trustees are to collect the debts and dispose of the assets of the corporation, and then make a ratable division of the same. The effect of all this is a dissolution of existing and pending attachments. The attachment of the plaintiff was dissolved when the corporate existence of the Insurance Company was terminated."

Again the Court say:

"The attachment of the plaintiff having been legally dissolved by the termination of the corporate existence of the insurance company, the plaintiff thereby lost any lien he might have acquired by his original attachment."

The Court hold that the corporation was dead, and, while *in order to ascertain the amount of the claim*, the case is allowed to proceed to judgment, there is no authority to issue execution. If a man dies the moment after a judgment is entered up against him, it needs no argument to show that an execution afterwards issued against him is absolutely void. The same must be true of this corporation.

In overruling the demurrer in the Court below, Judge Lowell held that the Bill could be maintained only to enforce the specific statute remedy.

The decisions which he cites from 25 Maine, 57 Maine and 66 Maine refer, not to *statute* proceedings, but to proceedings under the general equity jurisdiction to obtain and apply in payment of debts property fraudulently conveyed by the debtor. In such cases, the rule is well settled that the creditor must exhaust his remedies at law before he proceeds in equity. But the statute does not require that in this case. If it did, Bowker should have shown, not that the corporation had no assets, (for the corporation was dead,) but that the Trustees had paid him his share of the assets, and that without satisfying his judgment.

One point taken on the demurrer was not passed upon by Judge Lowell in his opinion. The Trustees were officers of the

Supreme Court of Maine, and could not be called into any other Court in their official capacity. They are made respondents in this Bill: and we hold improperly so, and that the demurrer should have been sustained, and should now be sustained, for misjoinder of parties, or joinder of parties who cannot legally be made parties in this Court.

The rule is that receivers (and similar officers of Court) are amenable in their official capacity only to the Court by which they were appointed.

JOSIAH H. DRUMMOND,
for Appellants.

BERRY, PRINTER, PORTLAND.

111-110

BURGOYNE (Law Tel. 587), 57, 59 & 61 Park St.

SUPREME COURT U.S.
JAN 29 1884
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States,

OCTOBER TERM, 1883.

JOSEPH D. TAYLOR and MARY R. HOBBS, Executor and Executrix of Will of the late William Hill, deceased,

Appellants,

AGAINST

ALBERT BOWKER,

Appellee.

No. 251.

Albert Bowker, the above-named appellee, moves to dismiss the above-entitled cause and the appeal therein, because such appeal was not entered nor docketed, nor the transcript and papers therein filed during the term of this Court to which the appeal was taken and the citation returnable.

The final decree was entered in the Circuit Court for the District of Maine in this case on the fourth day of October, 1880 (Record, pp. 55 and 56).

The appeal was taken and filed October 6, 1880 (*Id.*, p. 56).

The citation issued the same day (Oct. 6, 1880), returnable to the *third* Monday of the term of this Court then next ensuing, because the decree was rendered within thirty days of the commencement of that term (Record, pp. 57 and 58).

That term of this Court commenced its session October 11, 1880, and adjourned finally on the tenth day of May, 1881.

The record in this cause, or a transcript thereof, was not filed, nor was the cause docketed, until the fourteenth day of May, 1881 (Record, cover, Clerk's note of filing).

Wherefore the said Albert Bowker, appellee, moves that the appeal of this case be dismissed.

ALBERT BOWKER,
By EDWIN B. SMITH,
His Attorney.

BRIEF.

The omission to file transcript and docket cause during the term to which an appeal is taken, is a *jurisdictional* defect. The appeal must be dismissed.

Grigsby vs. Purcell, 99 U. S., 505, and statutes and citations in that case.

EDWIN B. SMITH,
Of Counsel for
Albert Bowker, Appellee.

NOTICE OF MOTION.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

To JOSEPH D. TAYLOR, Executor,
and MARY R. HOBBS, Executrix,
of William Hill, deceased,
Appellants.

IN SUIT AGAINST

ALBERT BOWKER.

No. 251.

And to JOSIAH H. DRUMMOND,
Attorney and of Counsel
for said Appellants.

Please take notice that I have filed in said cause a motion to dismiss the appeal therein, together with my brief upon said motion, of which motion and brief exact copies are above given; and that I shall submit said motion and brief to the Court on Monday, the third day of March, 1884, or as soon thereafter as counsel can be heard; and if said cause is reached for argument before that day, I shall object to the Court taking jurisdiction of said appeal for the reasons stated in and as the ground of said motion to dismiss said appeal.

EDWIN B. SMITH,
Of Counsel for
Albert Bowker, Appellee.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

JOS. D. TAYLOR et al.
vs.
ALBERT BOWKER.
No. 251.

APPELLEE'S BRIEF.

EDWIN B. SMITH

Of Counsel for Appellee.

C. G. Burgoyne, Law Printer, 57, 59 and 61 Park St., N. Y.

Supreme Court of the United States.

OCTOBER TERM, 1883.

JOS. D. TAYLOR ET AL.

AGAINST

ALBERT BOWKER.

No. 251.

APPELLEE'S BRIEF.

Statement.

Bill in equity brought to obtain satisfaction of a judgment in favor of Albert Bowker against the Piscataqua Fire and Marine Ins. Co. out of property of the judgment debtor in the hands of William Hill, the appellant's testator.

The substance of the complaint is that, after the loss under a policy issued by the Ins. Co. to the complainant had occurred, (which loss is the foundation of this judgment), and after the insolvency of the corporation had become well known to Mr. Hill, its treasurer, there was a pretended surrender by him to the company of nearly $30,000 of the par of its capital stock and he received in exchange assets of an actual value exceeding $30,000.

In a brief prepared before that of the appellant came to hand, we had reviewed the circumstances

of the fraud, and the pretexts by which it was sought to be justified; but as all attempt at justification has now been abandoned, it becomes unnecessary to go into details.

A few dates and facts need only to be stated.

Mr. Bowker took out his policy Nov. 15, 1865, to run one year from the last day of the preceding month. (Record 1, bottom.) His vessel was lost January 9, 1866. (*Id.*, 2, top.)

June 6, 1866, he brought suit, recovered judgment April 4, 1868, took out execution April 8, 1868, which was returned unsatisfied July 8, 1868. (Record, pp 1, 2, and 10.)

In his suit against the company, he summoned Mr. Hill as its garnishee, or "Trustee" as it is called in Maine. (Rev. Sts. of Me., c. 86, entitled "Trustee Process.") (Record, 21, top.)

Feb. 28, 1867, during the pendency of this "trustee" suit, the act was approved accepting the surrender of the company's charter, but continuing its organization for the purpose of winding up its affairs under sections 19 and 20 of chap. 46 of the Revd. Stats., "to prosecute and *defend suits at law*," and preserving all special remedies against officers and stockholders furnished by the acts relating to this corporation and all personal liabilities thereunder, or under any of the statutes of this State. (Record, pp. 18, 19.)

The Revised Statutes of Maine then in force (A. D. 1857) did, and those in force now do, provide by Ch. 86,

"SEC. 34. When the plaintiff recovers judgment against the principal, and there is any supposed trustee who has not appeared and been discharged by disclosure or discontinuance of the suit against him, the Court *shall* award judgment *and execution* against the goods, effects and credits in his hands, as well as against the principal in the usual form."

This course was followed in the suit of Bowker and the Piscataqua Fire and Marine Insurance Co. and trustees (Record, p. 21).

It may be observed that a person may be charged as trustee for property fraudulently conveyed to him; under

"SEC. 63. If any alleged trustee has in his possession any goods, effects, or credits of the principal defendant, which he holds under a conveyance fraudulent and void as to the defendant's creditors, he may be adjudged a trustee on account thereof, although the principal defendant could not have maintained an action therefor against him" (Rev. Sts. of Me., A. D. 1857 and 1871, c. 86).

Hill not making any "trustee disclosure" in the original suit, and judgment having therefore been rendered under section 34, and the requisite demand made upon the execution thus awarded, the action of *scire facias* upon that judgment was commenced under

"SEC 67. When a person adjudged a trustee in the original action does not, on demand of the officer holding the execution pay over and deliver to him the goods, effects, and credits in his hands, and the execution is returned unsatisfied, the plaintiff may sue out a writ of *scire facias* against such trustee, from the Court or Justice that rendered the judgment, to show cause why judgment and execution should not be awarded against *him* and *his own goods and estate*, for the sum remaining due on the judgment against the principal defendant.

SEC. 68. After such writ has been duly served on him, if he neglects to appear and answer thereto, he shall be defaulted; and if he was not duly examined in the original suit judgment shall be rendered against *him* for the whole sum remaining due on the judgment against the principal defendant." * *

"SEC. 71. If the trustee appears and answers to the *scire facias*, and was not examined in the orig-

inal suit, he may be examined as he might have been on the original suit; and if, on such examination, he appears not chargeable, the Court shall render judgment against him for costs only." * * *

This was the course pursued toward Mr. Hill. (Rec., pp. 20-23).

Hill's disclosure upon *scire facias*, the complainant put in evidence in the present cause. (Rec., pp. 23 to 38).

Without adjudication at *nisi prius*, the *scire facias* suit was submitted to the Law Court, where it was decided adversely to the plaintiff (Rec., p. 23, fol. 41), for reasons stated in the Opinion in Bowker in *sci fac.* vs. Hill, 60 Maine, 172.

January 30, 1872, the certificate of this decision was received by the Clerk of the Court for York County, who entered judgment accordingly, and in conformity with law (Rev. Sts. of Me., 1871, c. 77, § 16), as of the day before (Jan. 29, 1872), because that happened to be the last day of the term next preceding his receipt of such certificate. (Rec., p. 23, fols. 40 and 41).

Thus, beside exhausting the legal remedy by direct attachment, Mr. Bowker prosecuted his efforts by suit at law to subject to his execution the assets received by Hill from the corporation, or else Hill's own estate, until he was defeated by this authoritative and conclusive construction given to the act of 1867.

During the pendency of his *scire facias*, the trustees appointed under this act filed a bill in equity against Hill for an accounting of these very assets which Mr. Bowker was trying to reach at law, upon the ground that these trustees represented creditors as well as the company, and could demand in behalf of the former funds which the latter could not itself reclaim. (See Morawitz on Corps., § 585, last para-

graph and citations.) Mr. Bowker awaited, for a few months only, the result of these equity-proceedings. The Court ultimately decided, as of the same term that Mr. Bowker's case was decided, but at a later day, adversely to this claim of the trustees; declaring the trustees to "represent the corporation *alone*, and *not* its creditors or stockholders." Piscataqua I. Co. vs, Hill, 60 Maine, 182, middle.

It also held that the Co. had no right to demand an accounting from Hill for "a fraud to which it was party." (*Id.*, 183.) For this fraud, it was observed, the remedy for both stockholders and creditors was "such as may properly be pursued in their own names." (*Ib.*) Taylor vs. Taylor, 74 Me., 583.

In this suit of the trustees against Hill, I am reported as observing "that a *creditor* could maintain a bill to obtain payment of his debt from any property fraudulently conveyed to Hill, individually, by Hill, the treasurer, is too plain for argument.' (*Id.*, 181.)

Upon this theory, accepting as a binding and final "rule of decision" the construction put by the highest State tribunal upon this Act of February 28, 1876, Mr. Bowker, having devoted years to the exhaustion of all legal remedies, instituted the present bill, which was filed April 11, 1874. (Record, 1.)

The defendant demurred. (Record, 8, middle.) His demurrer was overruled. (*Id.*, 9, fol. 15.) Judge Lowell's opinion thereon appears at page 58 of the Record, and pages 60–62.

This appeal is, in effect, from Judge Lowell's ruling upon the demurrer, sustained as it is by the evidence subsequently introduced and the decree entered thereon by Judges Clifford and Fox, now appealed from herein.

Thus, three judges below (acting independently) have, upon the proven and conceded facts, ruled

adversely to the appellant's theory, or construction, of the law applicable thereto; two of them long eminent in the judicial history of Maine, and the third in that of the parent Commonwealth, where the legislation and decisions are similar to those of Maine.

The final decree in this case was entered Oct. 4, 1880. (Rec., pp. 55–56).

This appeal was taken Oct. 6, 1880. (Ib. 56).

Citation issued same day, returnable to the third Monday of the term, because the second Monday of October was less than thirty days after the decree appealed from. (Ib., 58, top).

Court convened Oct. 11, 1880, and adjourned May 10, 1881.

The transcript of record was filed and appeal docketed in this case May 14, 1881. (Record, cover, Clerk's filing).

BRIEF.

I.

This Court has not acquired jurisdiction of this cause. The appeal should, therefore, be dismissed.

Grigsby vs. Purcell, 99 U. S., 505, and Statutes and decisions there cited.

II.

The *only* defence made here is the Statute of Limitations; that our bill was filed a week too late.

This objection has been raised by demurrer, the facts upon which it is based being stated in the bill, and the Statute of Feb. 28, 1867, being a public act (under R. S. of Me., c., § 1, ¶ XXVI) of which the Court takes judicial cognizance (Rec., 8, fol. 13).

Instead of electing to stand by his demurrer, when it was overruled, the defendant acquiesced, and filed his answer. Can he now present the same question of law by answer that he has procured to be once determined between these parties upon demurrer? When stated in the answer it is "in the nature of a demurrer" (Van Hook vs. Whitlock, 7 Paige, 382, top).

III.

We will first offer some observations upon the Act of Feb. 28, 1867—upon which defendant bases his

whole claim that we are barred—*additional* to those we suggested to the Court below upon the argument of the demurrer and on the final hearing, which appear in and with Judge LOWELL's opinion (Rec., 58-62).

That act provides that "actions pending may be * * * continued, tried, and judgment rendered, *as in other cases*" (Record, 19, top).

This must mean *such* judgment as the general law applicable to other *similar* cases required; according as the pending suit might be at law or in equity, assumpsit, replevin, or detinue, &c.

Mr. Bowker's pending suit against the company was one in which Hill was summoned as trustee. Hill and the principal defendant were both defaulted. The *only* judgment to which these facts entitled the plaintiff therein was one against the company and its effects in the hands of Hill, which might include those fraudulently conveyed, and which the company itself could not recover (see *ante*, p.).

R. S. of Maine, 1857, c. 86, § 34, expressly provides that, in such cases, the Court *shall* award judgment and *execution* against the defendants.

We will notice, in passing, that in Maine all executions are issued by the Court, under its seal and the teste of its chief justice, returnable in three months from the date of issue. R. S. of Maine, 1857, c. 82, § 112. It issues by order of the Court, when under its seal.

Bryant v. Johnson, 24 Maine, 307, middle.
Stringer v. Coombs, 62 Maine, 165, bottom.

A suit commenced before the return *day* of the execution is premature, and cannot be maintained.

Austin v. Goodale, 58 Maine, 109.
Cota v. Ross, 66 Maine, 161.

The Court rendered judgment against the Ins. Co.

and Hill, as Trustee, in the usual and statutory form.

That *judgment* was not *void;* nor voidable.

The *execution*, which the statute *required* the judgment to award, was neither void, nor voidable. Sturgis v. Reed, 2 Maine, 109.

Certainly, Hill's representatives cannot *now* claim, in a *collateral* proceeding, to have it treated as void, when it never was disputed directly, nor in the *scire facias* based thereon. *Ibid.*

Gardner Mfg. Co. v. Heald, 5 Maine, 387, top.

Allen v. Portland Stage Co., 8 Maine, 207.

Especially, as the only claim is that it ought not to have issued against the company; when its trustees, under their authority "to prosecute and defend suits," could have had a voidable or erroneous execution quashed.

An execution issued directing the officer to demand certain property of Hill. Upon Hill's refusal to pay the execution, or deliver property thereon, an action of *scire facias* lay against him, upon which (if he repeated his failure to appear and disclose) a personal judgment might be rendered against him for the amount due on the original judgment, and execution issue against his body and estate. R. S. of Me., 1857, c. 86, §§ 67 and 68, *ante.*

Could an action in equity against Hill be maintained in the United States Circuit Court, while there was still a *legal* remedy by *scire facias* not exhausted?

The question is not, simply, whether execution ought to issue against the company; but whether a bill in equity can be maintained against Hill until the legal remedy is exhausted.

The *scire facias* is but a continuation of the origi-

nal suit, and to the judgment in that we had a right to pursue our legal remedy.

So, we say, our legal remedy was not exhausted till January 30, 1872, when the *scire facias* suit terminated (Record).

However this may be, the return of the execution was an essential pre-requisite, for the reasons assigned by Judge LOWELL, (Op., Rec., p. 61, fols. 108–9) where he refers to the opinion of Shepley and Fox, JJ., in the case of McKay vs. Hill, deciding a similar question. This last case does not seem to have been reported, but we have half a dozen copies of the opinion, which we will hand up with this brief. The reasoning of these opinions commended itself to Judge CLIFFORD upon the final hearing of the cause at bar.

It must be borne in mind that Judge LOWELL's opinion was upon demurrer, and rested upon the averments of the bill only; whereas the evidence since introduced, shows the suit against the company to have been one in which Hill was joined as trustee, and in which we were entitled to execution to charge him.

The statute which Mr. Drummond cites (R. S. of 1857, c. 46, § 34; Rec., 19), not only (as he notices) does not follow in regular sequence §§ 19 and 20, but it did not originate in the same act of legislation, nor was it enacted at the same legislative session. Judge Lowell calls attention to the fact that § 34 is a condensed reproduction of the statute of 1848, c. 64, § 2; (Rec., 61, fol. 108) and, as found by Shepley and Fox, JJ., "was a re-enactment, and was not intended as an alteration to the Act of 1848" (Record, 61, bottom).

The language of McKay v. Hill is found upon page 10, fol. 28, of the opinion in that case; viz.,

"The Rev. Stats. were intended as a revision of

former laws, and it has been expressly decided by the Supreme Court of Maine (45 Me., 72, *Hughes v. Farrar*), that in the revision of the Statutes of 1857, the principal design was to revise, collate and arrange the public laws; and, in revising, to condense as far as practicable; and a *mere change of phraseology* should not be deemed a change of the laws unless there was evident intention in the Legislature to make such change;" citing Gaffray v. Colville, 6 Hill, 574, and other New York cases, and Conger v. Barker, 11 Ohio St., 15; applying the same principle.

This doctrine is applied by this Court to the U. S. Revd. Statutes.

Myer v. Car Co., 102 U. S., 11, middle.

As originally enacted, the statue of August 10, 1848, c. 64, filled two pages of the statute book, § 2 occupying a page and a half. The substance of it is now found in R. S., c. 46, § 34. Originally the provision was: "Sect. 2. In all cases where any corporation as aforesaid has heretofore made or shall hereafter make any such division * * * any judgment creditor of creditors of such corporation, or his or their attorney, may make complaint thereof to the Supreme Judicial Court, therein setting forth in substance his or their judgment and alleging the same to be unsatisfied by reason of inability to find corporate property wherewith to satisfy the same;" etc., etc.—thus requiring the legal remedy to be exhausted by the usual return of *nulla bona*.

Adee vs. Bigler, 81 N. Y., 351.

A New York statute of 1848, c. 40, §10, makes the stockholders of manufacturing corporations severally individually liable to creditors: "§ 24. No *stockholder* shall be personally liable * * * unless a suit for the collection of such debt shall be brought against such company within one year after

the debt shall become due; and no suit shall be brought against any stockholder *who shall cease to be a stockholder* in any such company, * * * unless the same shall be commenced within two years from the time he shall have ceased to be a stockholder * * * nor *until an execution shall have been returned* unsatisfied," etc.

In a recent case the Court of Appeals hold the return of an unsatisfied execution, and not merely a suit brought, must be shown to support an action against one who was a continuing stockholder; and that an action *at law* begun August 18, 1879, upon a judgment recovered August 11, 1873, was not barred, because the execution was not returned till after August 18, 1873.

> Handy vs. Draper, 89 N. Y., 337, reversing the judgment below (23 Hun, 256), and citing numerous cases.

The Supreme Court of Maine, in the two cases first mentioned in this brief (60 Maine, 172 and 178), have construed the Special Act of 1867, c. 384, giving the obviously correct and only fair interpretation to the provision of section 2, that "all judgments shall be satisfied in the same manner as other claims against the company are satisfied, *by the trustees.*" It merely places judgments upon the same footing as other claims in such division as the trustees may make out of the assets which can properly come into their hands (60 Maine, 174, top).

The property we are pursuing could not come into their hands (*Id.*, 182, 183), and therefore is not such as can be ratably divided, but is "such as may properly be pursued in their own names" and behalf by creditors.

> Hubbard vs. Hamilton Bank, 7 Metc., 340, 346 and 347, near top.

The assumption that the corporation was "dead"

is erroneous. It lived "to prosecute and defend suits," which must include the right to bring *audita querela*, or move, to quash an improvident execution. The original judgment made Hill liable to the 'special remedy' by *scire facas* in the prosecution of which the issue and return of an execution was essential. *Non constat*, but Hill would fail to disclose on the *scire sacias*, as he did in the original action; in which case judgment and execution would go against him personally. If he disclosed property fraudulently conveyed,—so the Ins. Co. could not sue for its recovery, and (consequently) the Trustees could not reclaim it — and *of a nature to be reached by trustee process*, we could have had judgment for that. This was a "personal liability" under the statutes of Maine, which could only be decided after the "*supposed* trustee" (such is the language of R. S., Ch. 86, §) had disclosed.

IV.

Hitherto, we have replied to the objections of appellant's counsel as though his assumption that the lapse of six years between the accruing of the cause and bringing of the suit was an absolute bar in equity. Such, however, is not the law. Acting only upon the face of the bill—which makes no mention of the *scire facias* and other proceedings—Judge LOWELL observes (Rec., 61) that the State statute of limitations, though not adopted expressly in equity as at law, is equally binding, &c.

But at law it is the State statute *as construed by its highest Court* that is the rule of decision. It must be so in equity, if it follows the law. The Maine Statute of limitations in terms applies only

to actions at law. In equity, as in general equity practice, the true question is one of *laches*—not of mere lapse of time. No *mere* passage of years (less than twenty) forms an absolute bar. It is a question of circumstances;—of what justice and equity requires. Chapman vs. Butler, 22 Maine, 191.

Lawrence vs. Rokes, 61 Maine, 42, 43, 4.

Citing Phillips vs. Rogers, 12 Met., 411, *top, which see.*

In Lawrence vs. Rokes, 61 Maine, at page 43, the Court say that while, if the laches and delay of the complainant has prejudiced the other party as to the production of evidence, or "subjected him to any hardship which might have been avoided by more prompt proceedings," a period *less* than the statutory limit at law may be a bar to a bill in equity; " on the other hand, where it appears beyond question or dispute that lapse of time has *not in fact changed the condition and position of the parties in any important particular, and there are any peculiar circumstances entitled to consideration as excusing the delay*, they will *not* refuse the appropriate relief, although a strict and unqualified application of limitation rules might seem to require it."

Here, there has never been any laches; any acquiescence by Bowker in the adverse claim of Hill.

Sullivan vs. R. R., 94 U. S., 811.

V.

Nor do we agree that we are not entitled to maintain our bill upon the general equity the case discloses; as well as upon the Statutes of Maine.

As to those assets pledged as collateral, any surplus of which should go to the trustees, we might

be obliged to rely upon the statute. But as to the eighty-two shares of railroad stock, worth $8,200, and the $21,200 worth of Ins. Co. stock bought back, —transactions as to which the Co. was party to the fraud, and therefore it and its trustees could not reclaim the funds—we have a right to rest upon the general jurisdiction of equity over trust-funds (such as capital stock is) and over fraud in dealing with such trust-funds. This equity jurisdiction is not conferred, and cannot be taken away, by State legislation. As between a citizen of Massachusetts and a citizen of Maine, this Court can administer the equity arising upon the facts proved, (and no longer denied, or even defended by apology) irrespective of Maine Statutes.

Upon our general right to relief, no extended discussion or quotations are necessary. We will call especial attention to the recent case, "on all fours" with the present (professedly following the U. S Sup. Court decisions) of Clapp vs. Peterson, 104 Ill., 29–35, affirming 6 Bradw., and citing Hatch vs. Dana, 101 U. S., 205, Marsh vs. Burroughs, 1 Woods, 463, and Bartlett vs. Drew, 57 N. Y., 587.

We will also refer to the citations upon our brief below, at pp. 59 and 60 of the record; and to Co. of Morgan vs. Allen, 103 U. S., 498; Wardell vs. R. R., Id., 658; Upton vs. Trebilcock, 91 U. S., 47, 48.

If the Legislature of Maine had designed (which it did not) to defeat our vested right to the equitable interference of the Federal Court, it would have no power to do so.

Hawthorne vs. Calef, 2 Wall., 10.

EDWIN B. SMITH,
Of Counsel for Appellee.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

TAYLOR
v.
BOWKER.

No. 251.

APPELLEE'S ANALYSIS OF CASE AND BRIEF ON MERITS.

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SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1883.

JOS. D. TAYLOR *et al.*, v. ALBERT BOWKER.	No. 251.

APPELLEE'S ANALYSIS OF THE CASE AND BRIEF UPON THE MERITS.

STATEMENT.

This is a bill in equity brought to obtain satisfaction of a judgment in favor of Albert Bowker against The Piscataqua Fire and Marine Ins. Co. out of property of the judgment debtor wrongfully (as to Mr. Bowker) transferred to Wm. Hill, the appellant's testator.

The facts and dates, chronologically stated, are these:

This insurance company was originally chartered March 17, 1855, (Record, pp. 13–17; Ex. B) as the Piscataqua *Mutual* Fire and Marine Ins. Co.; but the twelfth section of the act (Record, p. 14) authorized the directors to form and maintain a guarantee capital, not exceeding $100,000 in approved securities, and to allow therefor not exceeding six per cent. per annum.

An amendatory act, approved Mar. 14, 1860,(Record, p. 17; Ex. C.), permitted an increase of guaran-

tee capital to $500,000, provided it should never be allowed to fall below $110,000.

The second section of this act declared that "The holders of the guarantee capital shall receive such share of the *net profits* of said company as may be provided by the charter and by-laws of said company, and declared by the vote of the directors. (Record, *Ib.*, mid.)

"Sect. 3. The directors may, at any time, organize one or more classes of said company upon *a stock basis*, but subject to all the preceding provisions as to the *amount of stock* and its investment" (Record, p. 17, folio 30.)

An Act of 1862, c. 168, approved Mar. 8, (Record, pp. 17, 18; Ex. P) abolished the "mutual" system of the original charter altogether, repealed all its provisions pertaining thereto, and dropped that word from the name of the corporation.

Its first section required that "The guarantee capital of said company shall not be less than $100,000, and shall be *divided into shares* of $100 each, and be *paid in* either in money or by note secured by at least an equal amount in marketable value of the stock, bonds or treasury notes of the United States," or by the other securities specified. "Said capital shall be vested in the name of said company, and be held for the payment of all losses and liabilities incurred by said company, during the continuance of its charter, or while any liabilities shall remain outstanding against it." (Record, pp. 17, 18; folios 30–31.)

The fifth section, after making the change of name above indicated, declared, "the said Piscataqua Fire and Marine Ins. Co. shall retain all the rights and privileges and be subject to all the duties and obligations now belonging to the Piscat. Mutual F. and M. Ins. Co., *not* pertaining to insurance upon mutual principals." (Record, *Ib.*; fol. 31.)

William Hill was one of the original takers of this stock "and continued to hold the same until the dissolution of the corporation," as hereinafter mentioned. (Record, p. 10; folio 18.)

He was the Treasurer of the Company "from *before* 1863 till the papers went into the hands of the Receivers, about May, 1867." (Record, p. 24; fol. 43, question 8.)

He was also a director. (*Id.*, question 10.)

November 15, 1865, Albert Bowker procured $5000 insurance in said company upon his steamer, Russia.

January 9, 1866, during the life of his policy, this vessel was loss by perils insured against therein; of which due notice and proof was made. (Record, pp. 1, 2; folio 2; p. 10, folio 17.)

Very soon after this date, the insolvency of this company became palpable and notorious; and, by reason of the heavy losses in the early months of 1866, this condition of the company became known to Wm. Hill (its treasurer) *prior* to May 1st of that year. (Record, p. 3, fol. 5; p. 11, middle.)

The transactions of Mr. Hill, and the other officers of this company, about this time (and, indeed, during his whole connection with the company) will more properly come in hereafter, in another connection.

His loss not having been paid, on the seventh day of June, 1866, Mr. Bowker brought suit against the company upon his policy, and summoned Mr. Hill as garnishee (or "Trustee," as it is called in Maine) of the company. (Record, p. 2, top; 10, fols. 16, 17.) Rev. Stats. of Me., c. 86, entitled "Trustee Process."

February 28, 1867, during the pendency of said suit, an Act was approved accepting the surrender of the company's charter, and directing its affairs to "be wound up in the manner provided in sec-

tions 19 and 20 of chapter 46 of the Revised Statutes" of Maine; with a preservation of special remedies against and statutory personal liabilities of officers and stockholders of the corporation. (Record, 18, 19, Ex. E.)

The second section of this Act permitted the prosecution of pending actions to trial and judgment as in other cases. (Rec., 19, top.)

Mr. Bowker prosecuted his suit to a judgment against the company and, as in other such cases, against Hill as its trustee, holding property of the company, April 4, 1868. (Rec., 21, top.)

Upon this judgment execution issued April 8, 1869, returnable three months thereafter, and returned wholly unsatisfied July 8, 1868.

By the statutes of Maine this judgment was not final against Hill; but such final judgment could be obtained upon Scire Facias if he failed to appear and disclose (as he did in the original suit) or if chargeable upon his disclosure.

To carry out the proceedings upon which he had entered, Mr. Bowker brought his writ of scire facias against Hill at the September Term, 1868, of the Court, upon which Hill disclosed and was discharged by the Law Court, January 30, 1872. (Rec., 23.)

His disclosure appears in evidence in this cause. (Rec., 23 to 52).

Though not stating facts sufficient to sustain an attachment at *law* of the property of the Insurance Company in his hands—for reasons given in the opinion of the Court, 60 Maine, 172—Hill's own disclosure did show fraud and an unlawful division and conversion of corporate assets amply to sustain a bill in equity against him by any judgment creditor of the company.

Accordingly Mr. Bowker filed the present bill against Hill April 11, 1874. (Record, 1.) The purport of the bill and of the answer thereto is shown by the following:

ANALYSIS.

Bill.

I.

States citizenship of parties.
(Record, 1.)

II.

Incorp. of Ins. Co., its transaction of ins. business till *about* May 21, '66, when it suspended, insolvent.

Surrendered its charter under Act of Feb. 28, '67, c. 384, under which Trustees were appointed Jan. Tr. Sup. Jud. Ct. for York Co., and Ins. Co. ceased to be a corporation.
(Record, *Ib.*)

III.

Bowker insured Nov. 15, '65, $5,000. Loss proved, not paid. Judg't recovered thereon Apr. 4, '68; ex'on issued Apr. 8, '68; returned "nulla bona" July 8, '68. Judg't remains wholly unsatisfied.
(Record, 1, bottom, and 2, top.)

IV.

Ins. Co. has no property to satisfy ex'on by common law proceedings. No assets in Trustees' hands.
(Rec., 2, middle.)

V.

Act Feb. 28, '67, preserved special remedies against, and personal liabilities of, officers and stockholders of Ins. Co.
(Rec., 2, bottom.)

Answer.

I.

Tacitly admitted.
(Record, 10, top.)

II.

Expressly admitted.
(Record, *Ib.*)

III.

Facts admitted.
Deft. advised issue of ex'on unauthorized by *law*.
(Record, *Ib.*, fol. 17, referring to Act of Feb. 28, '67, c. 384, § 2; Record, pp. 18, 19.)

IV.

Admitted by silence.
(Record, 10.)

V.

Admitted. Deft. advised all other remedies, legal or equitable, taken away by that act. Stats. of Me. did not then allow creditors' bill, except by R. S., c. 46, § 34.
(Rec., 10, middle.)
[See this sect., Rec., 19, middle.]

Bill.

VI.

Recites charter provisions as to guarantee cap. of Ins. Co. holden for losses and liabilities of Co.

(Rec., *Ib.*)

[See these provisions, Rec., 17, 18.]

VII.

Co. made unlawful division of its property; had, and its corporators have, and Hill has, some of such property, so divided, which cannot be attached at law. The property so held by Hill should be applied to satisfy Bowker's judg't.

When B. took his policy H. was Treas. of Co., a stockholder of 600 shares, and continued to be so till corporation ceased to exist.

(Rec., 2, bot., and 3, top.)

VIII.

At given dates in 1865, and Dec. 23, '64, Hill rec'd from Co. dividends aggregating $8,531 (of which $4,169 were paid between July 1 and Dec. 31, 1865), *not* paid from profits;—losses, &c., having then diminished Co.'s capital to an amt. greater than all div'ds declared, as Hill well knew.

(Rec., 3.)

Answer.

Deft. pleads Stat. of Lims., under said § 34.

(Rec., 10, mid.)

VI.

Submits construction of these acts to the Court.

(Rec., *Ib.*, fols. 17 and 18.)

VII.

Admits being Treas., but had "*little actual* knowledge" of Co.'s business and condition. Originally a stockholder of 210 shares, which he held till dissolution of Co.

Denies holding any other stock "*except as hereinafter stated.*"

"*Upon information and belief*" denies *unlawful* division of Co.'s property; that any dividends were *ever* paid stockholders, *except* 6 % int. upon "guarantee stock," *which was paid*, as he was informed and believes, by authority of express provisions of charter; and the alleged dividends paid Hill were int. upon his stock, which Co.'s officers then understood they had a right to pay, "*whether any profits had been earned or not.*"

(Rec., 10, bottom, and, 11, top.)

VIII.

Denies, *upon information and belief*, that Co. had made no profits in 1864 and *first half* of 1865. Says he *did not know these dividends were paid from profits* (*sic*). [Mem. Does *not* deny our allegation that they *were not* so paid.]

In Dec., '65, Hill had no suspicion Co. was insolvent; alleges, *on information and belief*, it was solvent; but losses *between* Dec.,

Bill.

IX.

May 5, '66, Co. was insolvent, as Hill knew. He then cancelled 82 shares of his stock, par of $8,200; and 212 shares, par $21,200. For the 82 shares, H. rec'd 82 shares Dover, etc., R. R. Co., belonging to Ins. Co. For the 212 shares H. rec'd secured note of Co., and subsequently paid this note to himself out of such pledged assets of Co. These transfers were void as to Bowker.

(Rec., 3, lower half.)

X.

May 5, '66, Co. transferred $94,075 (face value) of its assets to Hill, as per Schedule, to secure him upon $59,541 of his liabilities for Co., since paid, leaving large surplus subject to pay plf's judg't.

(Rec., 3 to 5.)

XI.

Hill pretends Co. rec'd profits in 1864–5, from which dividends were made; whereas only *show* of profits—as *per* Co.'s own Exhib's—was, by unlawfully including (as profits) premium moneys and notes on *undetermined* risks.

[R. S. of Me., c. 49, §§ 16 and 17, *post.*]

(Rec., 5, bottom.)

Answer.

'65, and May, '66, caused insolvency.

(Rec., 11, middle.)

[Mem. Does not meet our allegation of impaired capital.]

IX.

Admitted.

Surrender of 82 shares justified under an alleged contract of July 1, 1863.

(*Id.*, fol. 19.)

Surrender of 212 shares justified under an alleged vote of Dec. 26, 1862.

(*Ib.*)

As to agreem't of July 1, '63.

Rec., 24, middle.

See vote of Dec. 26, '62.

(Rec., 13, middle, and 31, top.)

X.

Admits transfer, but denies alleged value (Rec., 11, bottom). States his liability for Co. and its liability to him at $84,841. Says he has paid upon judgt. for Co. $3,686.96.

(Record, 12.)

[Memo.—The $84,841 includes alleged liability of Co. to Hill for 212 shares surrendered to Co. by Hill, $21,200 (Rec., 12, ninth line). Deducting this, bal. is $63,641; less $10,331 unlawful dividends = $53,310. Hill paid but $2,500 for judgt. (Rec., 52, fol. 89.)]

XI.

Tacitly admitted.

(Rec., 11, fol. 19.)

Comp. ¶ VIII., *supra.*

Bill.

XII.

Hill pretends 82 shares exchanged for D. & W. R. R. Co. stock under alleged contract of June 1, '63, acted upon May 4, '66; and that surrender of 212 shares was under pretended authority of vote of Dec. 26, '62.

(Rec., 5, last line, and 6.)

XIII.

Charges these transactions to be fraudulent and void, as to Bowker; that contract of June 1, '63, and vote of Dec. 26, '62, were disregarded by Co. and by Hill during solvency of Co.; Hill taking dividends, &c., on all this stock.

(Rec., *Ib.*, 6.)

XIV.

If valid when made, contract and vote could not be carried in to effect after Co. became insolvent.

(Rec., 6, middle.)

XV.

Hill pretends his shares not part of capital stock; that the dividends were, in fact, int. on "guarantee stock."

Plff. charges contrary to be true.

(Rec., *Id.*, lower part.)

XVI.

Hill is asked to give *detailed* statement of his acct. with Co.; of its property in his hands; and of all such property ever rec'd. by him.

(Rec. 7, top.)

XVII.

Prayer for relief is, to have plff.'s judgt. satisfied from Co.'s assets in Hill's hands.

(Rec., 7.)

Answer.

XII.

Admitted: ¶ IX., *supra.*

(*Ib.*)

XIII.

Denies the *fraud*, but *not* the *facts.*

(Rec., 12, fol. 21.)

XIV.

Not noticed.

XV.

Admits *fact;* takes issue upon *law.* See ¶ VII, *supra.*

(Rec., 10–11.)

XVI.

Makes no answer to interrogatories, except as per ¶¶ IX. and X., *supra;* and that "his agent, Wm. Hobbs," is sick and unable to prepare specific replies.

(Rec., 12, fol. 21.)

XVII.

Hill prays to be hence dismissed, &c.

(*Ib.*)

It will be noticed that the answer denies none of the *facts* set forth in the bill, but only the fraudulent intent with which the acts complained of were done, and which must be inevitably inferred from them as matter of logic and fact, as well as an irrebuttable conclusion of law.

The only evidence put in by the complainant—to show in still stronger light the fraudulent purpose instigating these transactions—was the appellant's own disclosure under oath, and extracts from the official record made up by him of his conduct as a treasurer and director of the company.

"Out of his own mouth hath he condemned himself."

To sustain his defence, he files nothing (beside the statutes) except a statement drawn up by counsel, accepted only so far as competent, and consisting almost entirely of incompetent matter. (Record, 52, bottom, to 54, top.)

Taken as his admission, it fully sustains the bill.

POINTS.

I.

I. That the capital stock of a corporation is a trust fund for the benefit of its creditors, is an axiom to support which citations would be superfluous: those below given are instances of its application to facts similar to—and in the first cited case, almost identical with—those now before us; with the essential difference (against appellants) that the transaction in the Illinois case might have been honest and the company solvent, while the conditions of the present case are the reverse.

Petersen vs. Illinois, &c., Co., 6 Bradw., 257, affirmed (as Clapp vs. Petersen) in 104 Ill., 29-35, citing
Hatch vs. Dana, 101 U. S., 205,
Marsh vs. Burroughs, 1 Woods, 463,
Bartlett vs. Drew, 57 N. Y., 587,
And Hastings vs. Drew, 76 N. Y., 9.

In his recent work on Private Corporations, Morawetz says:

"Every contract made by a corporation involves an implied representation that the capital subscribed at the formation of the company has been preserved as a fund pledged for the security of creditors. And a corporation *would be guilty of a misrepresentation and a fraud*, if it should obtain credit by professing to carry on business with the capital indicated by its charter after that fund had been in fact *secretly* withdrawn or diminished."

Morawetz on Corps, close of § 586.

II. This trust fund was abused and diminished by its trustees and custodian, as follows:

Our policy bore date Oct. 31, 1865. (Rec., 1, bottom.)

The annual meeting of the Ins. Co. coming upon the last Friday in November (Rec., 28, ans. 35; pp. 43, bottom, and 47, middle), the financial report made Nov. 25, 1864, was the basis upon which business was secured and transacted at the time complainant took out his policy.

That stated; "The guarantee capital *paid in* is $201,000, representing 2010 shares at $100 per share." (Rec., 48, near top.)

Of this stock Hill then held 517 shares—$51,700 at par. (Rec., 10, bottom, and 11, folio 19.)

Upon this amount of stock Hill received dividends so long as any were paid. (Rec., 25, question 16, and p. 28, question 38.)

After he became aware of the insolvency of the Company, Hill surrendered to it two of his certificates, representing 294 shares—$29,400.

The dates of these surrenders, and the color Hill gives to the transaction, are as follows:

April 27, 1866, the condition of the company being well known to be such that no one would accept its stock as a gift, he sells to it (as he says) 212 shares—$21,200, taking therefor company assets from which he subsequently collected that full amount. (Rec., p. 27, ans. 27.)

These 212 shares Hill subscribed for and took Aug. 1, 1862. (Rec., 27, bottom.) It will be seen by answer 34, there found, that they were a part of 434 shares then *taken by directors* of the company. Hill pretends that the re-transfer of his 212 shares was by virtue of a vote of these same directors (Rec., 28 and 36) passed Dec. 26, 1862, of which he annexes a copy to his Answer in this case (Rec., 13), although that vote had not been acted upon while the company was solvent, but thirteen shares had been "cancelled," Mar. 31, 1865, and he had given notice of a transfer of the certificate Dec. 1, 1865, to Edward E. Hill, his son. (Rec., 41, top.)

Hill's consciousness that the transaction could not stand the light of the actual facts is shown by the fictitious date he affixed to the company note which (as treasurer) he gave himself for this stock. (Rec., 28 and 29; folios 50 and 51.)

May 5, 1866, Hill, Odlin and their associate directors voted "unanimously" to transfer to Wm. Hill eighty-two shares of R. R. stock (par, $100 a share) and to Odlin $5000 worth of other stocks; under the pretended authority of some unknown and undiscoverable contract, alleged to have been entered into June 1, 1863, of which the records of the corporation at that time (or since, to May 5, 1866) give no trace, and the purport of which Hill himself cannot state; nor that it ever received the sanction of the directors. (Rec., 30, fol. 54; 24, fol. 43.)

It was made with the Pres. and Secy. who vote, as directors, to carry it into effect after insolvency.

He is not even certain that it stipulated for a re-exchange of insurance stock for the railroad stock; yet this was what was done.

June 1, 1863, the R. R. Co. was paying no dividends (Rec. 25, ans. 14); the Ins. Co. was *paying* then, whether *earning* them or not. Its treasurer (as an individual) then takes 82 shares—$8200, of the insurance stock and pays for it with the same number of non-dividend railroad shares, although the law only allowed the capital to be paid in money or secured stock paying at least six per cent. (Rec., 17, bottom.)

In May, 1866, the insurance company having become utterly and notoriously insolvent and the railroad paying 6 % dividends, secured by a lease to a strong road, he re-exchanges the former for the latter. (Rec. 25, and 14 to 19; and p. 54, fol. 90.)

Not only were these insurance shares carried upon the company's books as the absolute property of Hill from June 1, 1863, to May 5, 1866, (Rec. 53, fol. 88)

and reported at the annual meetings as part of the "paid in" stock, and the R. R. stock as part of the Ins. Co.'s assets (Wakefield v. Fargo, 90 N. Y., 214), but Hill notifies a transfer of them Dec. 1, 1865, to his son, Edward E. Hill, as he did (*as of the same date*) of the 212 shares. (Rec. 42, fol. 72.)

Edward probably wisely declining the paternal offering as a gift, Mr. Hill then sells it for its full par value to the Ins. Co. under this pretended contract.

At a time when the company had in fact made no profits, Hill received (in 1864 and 1865) as dividends upon his stock, including the 212 and the 82 shares at least $10,331; viz., $5262 in 1864, $1,800 in 1865 (Rec., 43), beside the note of $3269, paid out of assets in his hands, (Rec. 28, middle, ans. 38; 29, bottom, ans. 50) with $102 *interest* to June 8, 1866. (Rec. 33, top.)

It may be observed that this note bears date Dec. 1, 1865, the very day on which notice is given of his transfer of the 212 and the 82 shares to Edward E. Hill in view (we say) of the insolvency of the company.

The dividend account (Rec., 43) shows the receipt by Hill of further dividends, making the aggregate 1864–5, $11,190.36, instead of $10,331; but we have only computed those upon stock certificates shown to have been Hill's throughout.

As to certificate No. 222, it will be observed that it was for two hundred and *twenty-five* shares; of which 13 appear to have been, in some way, "cancelled" *March 31, 1865.* (Rec., 40, 41.) Yet Hill not only drew $900 Feb. 2, 1865, as interest on this certificate, but also $900 (*just the same amount*) *July 27, 1865.* (Rec., 43, middle.) This is *four per cent.* semi-annually, *on the whole 225 shares.* The $3269 was paid by the note given subssquently to

the date of our policy; but the whole payment of dividend was to our prejudice, since it was made from capital, which it *pro tanto* diminished below the amount stated when our insurance was obtained.

During these years 1864–5 no profits were in fact made.

Nevertheless, in 1864, "fully thirteen per cent" was paid as dividends; (Rec. 48, bottom) while in 1865 Hill received $10,331 on 517 shares; or more than twenty per cent.

R. S. of Maine, A. D., 1857, c. 49, §§ 16 and 17 provide:

"Sec. 16. The directors, at such time as their charters or by-laws prescribe, shall make dividends of so much of the profits of the company as they think advisable; but *moneys received and notes taken for premiums on risks which are undetermined* at the time of making such dividends *shall not be a part of said profits.*

Sec. 17. After any diminution of the capital by losses, depreciation or otherwise, no dividend shall be made until such diminution is supplied by actual funds, or the value restored."

Section 16 is only the legislative expression of the antecedent rule of law, equity and common sense. It merely prohibits directors from declaring the whole consideration of a contract its profits before it has been performed. Yet this rule was persistently disregarded by the directors of this company.

The annual statement for 1863, (Rec., 47) shows the amount of premiums received, $85,564.43; terminated, $77,925.96, difference $7,638.47.

In 1864, premiums received, $100,165.83; terminated, $75,034.60 (Rec., 51, top). Balance, $25,131.23.

In 1865, premiums received, $156,276.86; terminated, $113,857.78 (Rec., 37, top). Balance, $40,419.08.

In 1863 the capital was $160,800 (Sec. 44); of which $45,700 was paid in money (Rec., 46, middle); and the balance ($115,100) in secured notes. (Rec., 17, bottom.)

To pay the 6% on this $160,800 would have required $9,648.

The profit and loss balance as stated was $9,826.15 (Rec., 46, top.) Of this, however, $7,638.47 was for premiums on risks not terminated. (*Supra.*) Deducting this, but $1,187.68 really remained available for dividends upon $160,800 of stock.

In 1864, the capital was $201,000. (Rec., 49.) Six per cent thereon is $12,060; which was paid (Rec., 48, bottom) on all of that stock in for the full year. The profit and loss balance, from which to pay it, was stated at $10,379.24 (Rec., 51.) Take from the credit side of this account the $25,131.23 of unearned premiums (*supra*) and there was a *deficiency* of at least $14,751.99, instead of a surplus.

In 1865 the balance of the profit and loss account appears, for the first time, upon its face confessedly against the Co. This balance is put at $2,613.79, (Rec. 37.) Add thereto the $40,419.08 (*supra*) of unearned premiums wrongly counted as profits, and the total loss *November* 1, 1865, was at least $43,032.87. Yet *December* 1, 1865, its treasurer gives himself the Co.'s note for $3269 as the balance of his stock's share (to make up the $10,331 upon his 517 shares) of the *profits* of that year's operations! and on that same day notifies the transfer of his stock to Edward E. Hill. Stock which was paying more than 20 per cent. a year under such circumstances was too good for the treasurer of the corporation to retain in his own name any longer!

The annual statement of the "Company's Standing" in each of these years exhibits an impairment of the capital stock, as the profit and loss account shows the unprofitableness of the current business.

Nov. 1, 1863, the assets, such as they were, were insufficient to repay those stockholders who had paid $45,700 in money for their stock by $18,628.06. (Rec. 46, fol. 78.)

During the next year $20,448.50 was paid in money for additional stock, making $67,948.50 Nov. 1, 1864. (Rec., 52, top.)

Yet the deficit at that date was $8,249.02. (*Ib.*)

Nov. 1, 1865, the *acknowledged* deficit of capital was $10,613.53. (Rec., 38.)

At that date, the corporate debts (outside of such contingent claim of a stockholder for a return of his capital) of the year were $160,445.73. (Rec., 37.) These were absolute. To meet them, the company had premiums, in cash and notes, $156,276.86 and $1,555.08 of accrued interest. (*Ib.*) But, of these premiums, only $40,868.96 were actually earned, leaving (as before noticed) $115,407.90 of *unearned* premiums, (Rec. 37, top) representing $5,820,705 (Rec., 36, last line) of risks, wrongfully and illegally treated as earnings. Add this to the confessed deficit ($10,613.43 + $115,407.90) and we have the real diminution $126,021.43. Yet the respondent, who was present at these annual meetings and, as treasurer, made these financial reports (Rec., 53, top) went on with his associates, declaring, paying and receiving dividends in defiance of the Statute and in disregard of the equitable claims of creditors.

Hill was not ignorant of the situation of affairs. He attended the annual meetings and made these financial reports. (Rec., 53, top.) The little he did as Treasurer included the signing of these official documents; and his "little actual knowledge," coupled with "the information given him by the President and Secretary," upon which he "acted," induced him Dec. 1st, 1865, the day he drew his last "dividends," to notify a transfer of every share of his stock, apparently, to Edward E. Hill. Neither

in his answer, nor in the statement made for him by counsel, is it denied that the "little" he did know "of the condition and business of the company" was enough to satisfy him of its insolvency at the time he retransferred his stock to it, and collected the note of $3269 given Dec. 1, 1865, for "dividends." Indeed, his accounts and his conduct as to the notice of transfer of his shares to Edward E. Hill that day, and his subsequent dealings with them, are sufficient to overcome the formal denial in his answer of suspicion in Dec., 1865, of the company's insolvency, which the evidence (*his own accounts*) shows was *not* caused (but only made more hopeless) by heavy marine losses between that month and May, 1866, as he alleges. (Rec. 11, middle.)

Another allegation of his answer, admitted to be false in his statement, (Rec., 53, bottom, and 54, top) shows how little reliance can be placed upon the general averments of the answer. He swears—no, he is too conscientious to *swear*, he *affirms*—"that on the first day of Sept., 1872, he paid, on account of said company, $3686.94" on the McKay judgment. (Rec., 12, middle.) In the next paragraph (*Ib.*) he refers to "Wm. Hobbs, his agent." Hobbs was also Hill's son-in-law. In the statement (Rec., 53, bottom) it appears that Hobbs, the agent, paid but $2500 for this judgment, and his principal either repaid him or furnished the money originally. For this correction we are undoubted indebted to the fact that Mr. Putnam was McKay's attorney.

Another allegation shown by the corporate records to be false is the averment in the answer that the "dividends paid to him were the interest upon his stock which the officers *then* understood the company had the right to pay, whether any profits had been earned or not." (Rec., 11, end of fol. 18.)

That the officers did *not* so understand is evident

from the form of certificate adopted, which expressly declares that the interest upon the stock is "payable from the *net earnings* of the company." (Rec., 40 and 42.)

The charter explicitly declares the trust thus:

"Said capital shall be vested in the name of said company, and be held for the payment of all losses and liabilities incurred by said company during the continuance of its charter or while any liabilities shall remain outstanding against it." (Rec., 18, top.)

This provision is entirely inconsistent with the theory that it could be frittered away in paying interest upon itself!

II.

The legal proposition—which, though a modern doctrine, is now well established, (17 Wall., 620, middle)—that the capital stock of a corporation is a trust fund, the dealings therewith by its trustees being subject to the supervision of a court of equity, when applied to the facts of this case (as above indicated—showing how such a trust has been abused and the fund illegally and fraudulently perverted by the respondent to his own benefit, to the injury of the complainant, who here seeks appropriate relief) —make a controversy between citizens of different States, of which the federal tribunals have cognizance in equity, irrespective of State legislation.

This bill could be maintained, as to nearly every one of its allegations,—as to *all* that are material to the relief asked—had Maine never enacted any statute granting recourse to equity when there has been an unlawful division or diversion of corporate capital.

In addition to the relief obtainable by the administration of general equity principles one whose personal status entitles him to call his adversary before the bar of a U. S. Circuit Court, can *there* avail himself of any rights of action at law or in equity vested in him by force of a State statute.

This bill is maintainable, then, both (1.) upon general equitable principles and (2.) under sections 34 and 35 of the R. S. of Maine, c. 46, recited on page 4 of the appellant's brief.

I. That the facts stated and proved by us would sustain a suit in equity, upon the general principles (relating to trusts and fraud) upon which it is administered, all the authorities and decisions show: the vast majority of the adjudications stating or applying the doctrine of the trust-character of capital stock being entirely independent of statutory provisions.

This proposition is thus stated by

" DIXON, C. J. It would be much against reason and common justice, if the stockholders of an incorporated company, after having paid in the amount of their stock subscriptions according to the requirements of its charter, should be permitted afterwards, and without first discharging the liabilities of such company to the extent of such subscriptions, to withdraw their stock and leave the creditors unsatisfied. * * * The following authorities clearly establish that, *at the common law and without any statutory authority* for that purpose, and as a sort of *distinct exercise of equitable jurisprudence*, courts of chancery will grant relief in such cases. They are Spear v. Grant, 16 Mass., 9; Vose v. Grant, *Id.*, 505; Wood v. Dammer, 3 Mason, 308; Ward v. Mfg. Co., 16 Conn., 593; Mann v. Pentz, 3 N. Y., 415; Nathan v. Whitlock, 9 Paige, 152; Henry v. R. R., 17 Ohio, 187; and Ogilvie v. Ins. Co., 22 How., 380. These authorities also sustain the general principle above stated, [as to capital being a trust-fund.]

Such actions, when prosecuted *independently of any statutory provisions*, are sustained on the ground that the capital stock, being a trust fund, may be followed by the creditors and others having an interest in the proper application of it, into the hands of third persons having notice of the trust attaching to it; and that stockholders, whether delinquent or withdrawing, are always, both in law and fact, affected with such notice. The rights of creditors being superior, and partaking somewhat of the character of a lien, equity will regard and work them out by the same means by which the corporation itself should have done so. Such actions are also in many respects like an ordinary creditor's suit, but on account of the peculiar nature of the trusts to be enforced, I am inclined to agree with counsel that, at least as against stockholders, they might still be maintained though the creditor's bill should be abolished by statute."

Adler v. Milwaukee, 13 Wis., 60-62. (A. D., 1860.)

In the years which have elapsed since the foregoing decision was announced, the doctrine contained in this question has been rendered familiar, especially by the adjudications of this Court.

Hagan v. Walker, 14 How., 29.
Sawyer v. Hoag, 17 Wall., 620.
Upton v. Trebilcock, 91 U. S., 47, 48.
Hatch v. Dana, 101 U. S., 205.
Morgan Co. v. Allen, 103 U. S., 508.

Though some of these cases have been reported since Judge Lowell overruled the respondent's demurrer, yet, in view of the earlier ones (especially Marsh v. Burroughs, 1 Woods, 467), and of their obvious tendency, we cannot believe Judge Lowell *intended* to hold (as appellant's brief, p. 9, middle, asserts) that the allegations of this bill did not state an equitable cause of action, independently of the provisions of the Statutes of Maine. He certainly does not *say* this, nor anything like it, in his Opin-

ion, (Record, 60) which commences with the statement that "this bill is founded on the general equity of creditors," etc., "*and* on the R. S. of Me., C. 46, § 34," etc. As to such indebtedness as the corporation could enforce (viz, for the surplus collected from collaterals above the sum for which they were pledged) he was "much inclined to think the objection well taken that the Trustees are the only persons who can bring him to an account." (*Ib*).

But as to the surrendered stock (amounting to $8,200 and $25,000—$33,200, and interest) the Supreme Court of Maine had conclusively held that Hill could *not* be called to account by the corporation or the Trustees (who only represented *it*, and not creditors—60 Maine, 182, middle) for "a fraud to which it was party;" the remedy for which was "such as may be pursued in their own names" by stockholders and creditors. 60 Maine, 183.

These remedies are *not* merely those which the "statutes of the State" (in however large type printed—see appellant's brief, top of page 4) prescribe; but those also which the constitution and laws of the United States permit to be pursued in its courts in a controversy between citizens of different States, at law or in equity.

It may be observed in passing, that ten years ago the equity jurisdiction of the Maine courts was very restricted; limited to only a few causes specified in the statutes.

The equity jurisdiction of the federal courts can neither be given, taken away, narrowed or enlarged by State legislation; except as the latter creates some *new* statutory right.

If the legislature of Maine intended to abridge the powers of the federal courts (which it obviously did *not*), its action would be *pro tanto*, or wholly, void.

The right to reach the property which (as to *us*, though *not* as to Ins. Co. 60 Me., 183 (Union Ins.

Co. v. Power, 3 Paige, 365) was assets of the corporation fraudulently concealed, and to obtain therefrom satisfaction of our judgment, was *not* a new statutory right in the U. S. Circuit Court, as we have just noticed R. S. c. 46, § 34, (Rec., 19) conferred upon the Sup. Jud. Court of Maine no power not already existing in every tribunal having general (as to subject matter) equity jurisdiction. All the decisions, including those of Maine, treat such legislation as affirmative of the common law.

See Tappan v. Evans, 11 N. H., 311, 320, *et seq.*, 327, citing New York and other cases.
Gordan v. Lowell, 21 Maine, 257, and
Sargent v. Salmond, 27 Maine, 544, both citing.
Hadden v. Spader, 20 Johns., 254.

See, also, my citations pp. 59 and 60 of the record.

All these cases state the return of an execution unsatisfied, as proof of the exhaustion of legal remedies, as an essential prerequisite to maintain a bill in chancery.

Adee v. Bigler, 81 N. Y., 349, and cases cited.

The Courts of Maine have always so held, as stated by Judge Lowell. (Rec., 61, middle.)

II. It so happens that the facts shown also suffice to bring this case within the terms of R. S. of Maine, c. 39, § 34.

Beside making a case under that statute, we may refer to its terms as indicating that Hill and his associates knew their transactions to be under the ban of the law.

The appellants tacitly admit the proofs make a case under the statute, which they seek to defeat by technicalities sufficiently considered in our brief in reply thereto.

III.

We have shown into Hill's hands property to respond to claims of creditors of the Ins. Co., though the corporation and trustees could not reclaim it, as follows:—

Proceeds of $8,200 of stock.

Proceeds of $21,200 of stock *at least;* the certificate (No. 222) calls for 225 shares ($25,000), and that is the sum on which Hill received dividends; there being no transfer shown, and no explanation of how or why 13 shares were "cancelled," March 31, 1865. (Rec., 41, top.).

The $10,331 paid out of the capital under the name of "dividends."

As a wrongdoer, he is chargeable with interest upon these monies, of which he has actually had the use, since May 5, 1866.

All he has paid is $2,500 Sept. 1, 1872, on the McKay judgment.

As the Ins. Co. and trustees have not claimed, and now cannot claim, the proceeds of collaterals put into Hill's hands by the company, we would have the right (if necessary) to follow them and their proceeds, with the dividends and interest collected thereon. Hill collected $73,325 of them. (Rec., 55, top.)

He claimed they secured $84,841: but this amount included the $21,200 for stock sold the insolvent company and $3,629 for illegal dividends. (*Ib.*) Deducting these amounts (aggregating $24,829) from the sum claimed by him ($84,841) and it leaves but $60,012 paid out by him upon (presumably) legitimate demands, from $73,325 collected, exclusive of of interest. This source alone leaves $10,044 and interest subject to our claim, or, according to the Master's report (Rec., 54, 55) $9,798 and interest upon

the $21,200 void note; more than enough to answer our purpose. (*Ib.*)

The conveyance of the property turned over to secure the notes for $21,200 and $3,260, and as the consideration for the surrender of the 82 shares of insurance stock, was fraudulent and void as to us, though good against the company, the Stat. of Eliz. being the common law of Maine.

Bullard v. Hinkley, 6 Maine, 289.
Thompson v. Moore, 36 Maine, 47.
Andrews v. Marshall, 43 Maine, 272.
Bowden v. Johnson, 107 U. S., 251.

Being fraudulent as to us, our equity is superior to his, and he can make no claim of offset (except the $2,500, McKay judgment) in his own behalf.

Murtha v. Curley, 90 N. Y., 372.
Briggs v. Cornwell, 9 Daly, 438–9.

Certainly, not as against our statutory claim.

Wheeler v. Miller, 90 N. Y., 353.

The judgment of the Circuit Court should be affirmed.

EDWIN B. SMITH,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1883.

JOSEPH D. TAYLOR, ET AL.,

EXECUTORS AND APPELLANTS,

vs.

ALBERT BOWKER.

No. 251.

ADDITIONAL BRIEF FOR ALBERT BOWKER.

Every defence is now abandoned by the appellants, who were the defendants below, except the analogy of the statute of limitations. They do not even set up laches, which defence might have some equity; nor do they pretend that they have lost any rights or evidence, or been in any way prejudiced, by lapse of time. They therefore make in a court of equity a wholly inequitable defence, and must maintain themselves in such behind barriers of technicalities, which are impenetrable; they must make their position, almost like a plea in abatement, certain to every intent.

A Our first reply is, that six years did not elapse between the accruing of our right of action and the filing of our bill.

This proceeding may be sustained either by common law, or by the revised statutes of Maine, of A.D. 1871, chapter 46, section 34.

This provision originated in the act of 1848, chapter 64, entitled, "An act relating to corporations," the second section of which act expressly required the complainant to allege the judgment to be unsatisfied, by reason of inability to find corporate property wherewith to satisfy the same. Under the well settled practice of the state of Maine, this can be shown only by a return of the execution, see Howe vs. Whitney, 66 Maine, p. 17; and executions are by statute returnable three months from the date of their issue.

Howe vs. Whitney, ante, shows the law on this point is strictly held in Maine; and this decision, although perhaps not acting directly upon the supreme court of the United States as a mere rule of equity practice, does act directly upon the construction of the statutes of the state, and in this way binds the supreme court of the United States in construing such statutes.

It is also strictly held in Maine, in an analogous case, that the uncertainty whether an execution may not be satisfied, cannot be determined until the return day of the execution, Roberts vs. Knight, 48 Maine, p. 171; and in Cota vs. Ross, 66 Maine, p. 161, this was held to apply, though it was shown that the judgment debtor had no property during the life of the execution.

Indeed, if it is required that an execution should issue at all, neither the common law nor the statute would refuse a creditor the privilege of the three months given for the return of the execution, to enable him to have his

execution satisfied, before putting him to the expensive and intricate litigation of the kind to which the complainant in this case has been forced, and, certainly both the common law and the statute ought to allow that portion of time to a stockholder situated like William Hill, to determine whether he will cause the judgment to be satisfied before he is subjected to a like expensive litigation.

To sum up the practice in Maine is to make the return of the execution the essential and conclusive evidence, that the judgment could not be satisfied except by suit against stockholders, or by proceedings in equity; and a proper construction of the Maine statutes necessarily imports this settled practice into the statutes.

That the revision of A.D. 1871, does not change the law from the statute of A.D. 1848, was decided by Judges Shepley, Lowell and Fox; and is in accordance with the settled view of the law in the state of Maine. This was settled with reference to the revision of A.D. 1857, by Hughes vs. Farrar, 45 Maine, p. 72.

This meets the case because the change in phraseology was made in the revision of A.D. 1857, chapter 46, section 34; and the revision of A.D. 1871, is a precise re-enactment of the revision of A.D. 1857.

B Inasmuch as the special statutes, chapter 384, A.D. 1867, accepting the surrender of the charter of the Piscataqua Fire and Marine Insurance Company, expressly provided that the act should not relieve any personal liability, "under any statutes of the state," and inasmuch as the returning of an execution was an essential pre-requisite to proceeding against the stockholder, under the

revision of A.D. 1871, it necessarily follows that an execution would issue notwithstanding the surrender of the charter. This was clearly embraced in the decision of Judges Shepley and Fox, in the case of McKay, et al., vs. Hill, a copy of the opinion in which case has been passed the court, to the maintenance of which case the issue of an execution, after the passage of the act of A.D. 1867, was a pre-requisite. Moreover, the act of A.D. 1867 provides that suits may go to judgment, but nowhere prohibits the issuing of an execution. The only parties who could regularly object to the issuing of an execution, or question its validity, are the trustees appointed to wind up the corporation; but they are made parties to this suit, and offer no objection.

An analogous case in Maine relates to insolvent estates of deceased persons; where executions may issue and be satisfied, unless the administrator objects, Although the statutes contain provisions as to the method of satisfying judgments against insolvent estates, like those of the act of A.D. 1867. Wyman vs. Fox, 55 Maine, p. 523.

C But there is no statute of limitations in Maine, by terms applicable to any proceeding by a bill in equity; and the equity courts in Maine merely recognize the statutes upon equitable principles.

See Lawrence vs. Rokes, 61 Maine, p. 43, cited in the brief, p. 14, of my learned associate in this case.

Therefore there is nothing whatever in the local law which bars this proceeding; and the court, here, is free to apply the general principles of equitable jurisprudence, whether the suit proceeds upon the statute, or at common law.

D There is no concurrent remedy at common law; so, at the most, this is a case in which the court proceeds only upon the analogy of the statutes of limitations, and we rely upon the citation from Lawrence vs. Rokes, ante, as a satisfactory statement of the principle applicable.

E We bring ourselves clearly within the statement of Lawrence vs. Rokes. The proofs show, and it is not denied, that the lapse of time has not, in fact, "changed the condition and position of the parties in any important particular; and there are very peculiar circumstances entitled to consideration as excusing the delay" in this case, as follows:

It appears, as shown by the brief of Mr. Smith, that complainant was attempting, with reasonable prospect of success, to collect his claim in another suit until 1872; and during the same period the trustees of the corporation were seeking in the supreme court of the state to recover the same assets, which we now seek to recover here.

The proceeding in this suit was a novel one, and has no precedent in the State of Maine; and the decisions in Bowker vs. Hill, 60 Maine, p. 172, and Piscataqua Insurance Company vs. Hill, 60 Maine, p. 178, left very grave doubts as to the proper course to be pursued.

Mr. Hill was not only stockholder, but director and treasurer, and had special knowledge of the transactions covered by this bill; and it is apparent from the nature of the case that it greatly embarrassed ~~him~~ complainant was in getting at the details—to illustrate: Mr. Hill had undoubted claims against the corporation of $59,541 in the way of notes;

for 212 shares of the stock of the corporation surrendered by said Hill after the corporation became insolvent, he took the note of said corporation for $21,200; and received from the corporation, as collateral, the list of notes shown, folios 6 to 9, amounting to $94,075, and claimed to hold all of said notes as collateral, both for the valid claims of $59,541 and for the note of $21,200. Now those collateral notes were of a value unknown to the complainant; and Complainant Bowker alleges, folio 8, that what portion of collaterals was collected was unknown to him, even when the bill was filed, and this is not denied in the answer; Mr. Hill in his answer, folio 20, states that the claims he held against the company, including the $21,200 note, amounted to $84,841, for which he held as collateral, the list of notes, folios 6 to 9; he says, folios 20 and 21, that he had collected from said collateral, up to the time of filing his answer, which was on the 6th of December, 1879, folio 15, in all about $73,336; but he nowhere discloses in his answer the dates when large portions of this gross amount were collected, and says, folio 21, that he is unable to give such details. This shows how difficult it was for the complainant to ascertain what remedy he had, or whether he had any remedy; inasmuch as the surrender of his stock, by Hill to the company, was at least a legal fraud, the case would seem in this respect to come within the spirit and analogy of the exception in the statute of limitations of Maine, which reads as follows: "If a fraud is committed which entitles any person to an action, the action may be commenced any time within six years after the person entitled thereto discovers that he has just cause of action." Revised Statutes of 1871, chapter 81, section 92.

Clearly it was not discovered by complainant that he had just cause of action, until the disclosure of Bowker was made in the suit of scire facias, appearing folios 36 to 54; and this disclosure was not completed until January 22, A.D. 1869, folio 53. And let it be stated here with reference to this disclosure, that Mr. Hill had, under the statutes of Maine, a right to disclose, if he had so seen fit, in the original Garnishee suit, which was commenced in June, A.D. 1866, folio 42, and on which judgment was rendered in A.D. 1868, as already appears; but instead of doing this, he kept the facts within his own breast, forced the plaintiff to bring scire facias upon the original judgment, so that the plaintiff was delayed by Mr. Hill from the 8th day of June, A.D. 1866, until the 22d day of January, A.D. 1869, in ascertaining whether or not he had just cause of action; and this is especially true, in view of the further fact, as will be hereinafter more clearly explained, that Mr. Hill had a large amount of just claims against the corporation, which, for aught the complainant could discover, until he obtained Mr. Hill's disclosure, would absorb all the collateral assets placed in Mr. Hill's hands by the company.

This leads us naturally to another complete answer to the defence of the statute of limitations.

F The basis of this claim against Mr. Hill ~~has~~ was the following transactions: 1. Mr. Hill surrendered 82 shares of stock in exchange for 82 shares of Dover and Winnipiseogee railroad stock. 2. That he surrendered 212 shares in exchange for the company's note of $21,200. 3. He took the company's note for $3,269, for dividends which were illegal.

The statement of computations bearing upon all of these transactions, appears folios 90 to 93.

As already stated, Mr. Hill had other claims against the company which were undisputed: and he received as security for the undisputed claims and for the $21,200 note and for the $3,269 note, notes and stocks of the nominal value of $94,075, folios 6 to 9.

The transaction of the surrender of the 82 shares was completed at the time of the surrender; but whether or not Mr. Hill would receive actual value for the 212 shares surrendered, and for the $3,269 note for dividends, depended upon whether he should collect from the collaterals in his hands, sufficient to pay his undoubted claims and also the notes for $21,200 and $3,269.

At the time of his disclosure upon scire facias, he was slowly collecting these collaterals. It appears, folios 57 to 60, that on June 8, A.D. 1866, his collections were short of what he claimed due him, by the sum of $51,214.56. At the time the disclosure was made in January, A.D. 1869, it appears, folio 48, ans. 30, that there still remained due him $17,047.79, and interest which would carry it beyond $20,000, nearly the amount of the $21,200 note, so that at that time, viz., January 20, 1879, whatever completed right of action we might have had on account of the Dover and Winnipiseogee Railroad Co.'s stock transaction, we had not a completed right of action arising out of the surrender of the 212 shares of stock. That is to say, as the facts then stood, we could not have compelled Mr. Hill, on account thereof, to have paid us the amount of our judgment in the original suit, because he had not realized the proceeds of the collaterals. This was an inde-

pendent transaction, and therefore an independent source from which our judgment may be satisfied; and our right to proceed on account of it was not barred, even if all our other rights were barred. It does, however, appear, folio 91, that at the time the bill was filed in this case, Mr. Hill had collected the $3,269 note, and also $9,798 upon the $21,200 note, and interest upon each of these sums from June 6, A.D. 1866, and that the $9,798, with interest, would more than cover the whole McKay et al. judgment, which Mr. Hill had paid, and complainant's judgment and interest, so that between January, A.D. 1879, and the filing of the bill in equity, these collections ripened, and gave us a new and independent basis to support our bill, which is not in any way barred by the statute of limitations.

G I do not intend to go over matter contained in the brief of my learned associate; but have not overlooked the fact, explained in his brief, that a bill in equity might not lie pending the proceedings by scire facias, which were supplemental to the original suit.

H Mr. Drummond makes the point that trustees are the officers of the court, and cannot be sued without leave of the court. There is nothing in the practice of the State of Maine peculiar upon this point, which should justify him in saying, these trustees are the officers of the court, in the sense in which a receiver is an officer of the court. And, moreover, the trustees are made parties to this suit, and neither of them, nor the supreme court of the State of Maine, have interposed any objections to this proceeding.

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Of Counsel.